

No. 90-1912-CSX
Status: GRANTED

Title: Stephanie Nordlinger, Petitioner
v.

Kenneth Hahn, in his capacity as Tax Assessor for
Los Angeles County, et al.

Docketed:
May 28, 1991

Court: Court of Appeal of California,
Second Appellate District

Counsel for petitioner: Hall Jr., Carlyle W.

Counsel for respondent: Clinton, DeWitt W., Lungren, Daniel,
Phillips, Carter G., Lee, Rex E.

40 copies of pet rec'd 052891-1 retained 40 corr'd
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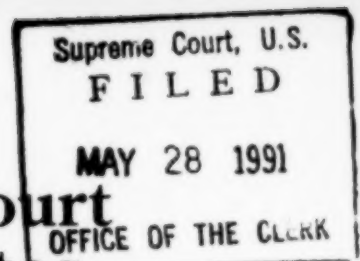
Entry	Date	Note	Proceedings and Orders
1	May 28 1991	G	Petition for writ of certiorari filed.
2	Jun 24 1991	G	Motion of William K. Rentz for leave to file a brief as amicus curiae filed.
12	Jul 12 1991	P	Motion of League of Women Voters of California for leave to file a brief as amici curiae filed.
3	Jul 15 1991		Brief amicus curiae of Howard Jarvis Taxpayers Association, et al. filed.
4	Jul 15 1991		Brief of respondents Kenneth Hahn, et al. in opposition filed.
6	Jul 16 1991		Brief amicus curiae of Building Industry Assn. of Southern California filed.
5	Jul 17 1991		10 copies of Lodging received.
8	Jul 17 1991		Brief amicus curiae of California filed.
7	Jul 24 1991		DISTRIBUTED. September 30, 1991
9	Jul 25 1991	X	Reply brief of petitioner Stephanie Nordlinger filed.
10	Oct 7 1991		Motion of William K. Rentz for leave to file a brief as amicus curiae GRANTED.
11	Oct 7 1991		Petition GRANTED.
14	Oct 28 1991		***** Order extending time to file brief of petitioner on the merits until December 23, 1991.
15	Nov 5 1991		Record filed.
		*	Original record, Court of Appeal of Calif., 2nd Appellate District, 2 Volumes (1 Box)
22	Dec 17 1991		Brief amicus curiae of California Assessors' Association filed.
21	Dec 18 1991		Brief amicus curiae of International Association of Assessing Officers filed.
23	Dec 18 1991		Brief amicus curiae of William K. Rentz filed.
27	Dec 18 1991		Lodging submitted by amicus curiae, CA Assessors' Assn. received.
17	Dec 23 1991		Joint appendix filed.
18	Dec 23 1991		Brief of petitioner Stephanie Nordlinger filed.
19	Dec 23 1991		Brief amicus curiae of American Planning Association, et al. filed.
20	Dec 23 1991		Brief amici curiae of Building Industry Association of Southern California, et al filed.

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Entry	Date	Note	Proceedings and Orders
24	Dec 23 1991		Brief amicus curiae of League of Women Voters of California filed.
26	Dec 30 1991		Order extending time to file brief of respondent on the merits until January 31, 1992.
16	Jan 2 1992		SET FOR ARGUMENT TUESDAY, FEBRUARY 25, 1992. (1ST CASE)
28	Jan 6 1992	D	Motion of Howard Jarvis Taxpayers Association, et al. for leave to participate in oral argument as amici curiae, for divided argument and for additional time for oral argument filed.
29	Jan 21 1992		Motion of Howard Jarvis Taxpayers Association, et al. for leave to participate in oral argument as amici curiae, for divided argument and for additional time for oral argument DENIED.
30	Jan 24 1992		CIRCULATED.
31	Jan 28 1992	X	Brief amici curiae of Howard Jarvis, et al. filed.
32	Jan 31 1992	X	Brief amici curiae of Governor Pete Wilson, et al. filed.
33	Jan 31 1992	G	Motion of United States Justice Foundation, et al. for leave to file a brief as amici curiae filed.
34	Jan 31 1992	G	Motion of People's Advocate, Inc., et al. for leave to file a brief as amici curiae filed.
35	Jan 31 1992	X	Brief amicus curiae of California filed.
36	Jan 31 1992	X	Brief amici curiae of Howard Jarvis Taxpayers Assn., et al. filed.
37	Jan 31 1992	X	Brief amicus curiae of California Taxpayers Association filed.
38	Jan 31 1992	X	Brief amicus curiae of Senate of the State of California filed.
39	Jan 31 1992	X	Brief amici curiae of Washington Legal Foundation, et al. filed.
40	Jan 31 1992	X	Brief of respondents Kenneth Hahn, et al. filed.
41	Feb 11 1992	X	Reply brief of petitioner Stephanie Nordlinger filed.
42	Feb 24 1992		Motion of United States Justice Foundation, et al. for leave to file a brief as amici curiae GRANTED.
43	Feb 24 1992		Motion of People's Advocate, Inc., et al. for leave to file a brief as amici curiae GRANTED.
44	Feb 25 1992		ARGUED.

90-1912
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**In the Supreme Court
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October Term, 1990



STEPHANIE NORDLINGER,

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v.

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County, and the
COUNTY OF LOS ANGELES,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Does California's ad valorem property tax system as modified by Proposition 13's welcome stranger provision violate the equal protection clause by taxing newly purchased property 10, 12, 15, 17 and even 583 times higher than like property owned by long-time owners, with no possibility of ever seasonably attaining a rough equality in tax treatment?

Does the harshly disproportionate tax burden Proposition 13 imposes on recent migrants and other newcomers impede the right to travel without a compelling state purpose?

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California is reported at 225 Cal.App.3d 1259, 275 Cal.Rptr. 684, and is reprinted in the Appendix at A.

The California Supreme Court's unreported denial of review is reprinted in the Appendix at B.

JURISDICTION

The judgment of the California Court of Appeal was entered December 3, 1990. The timely petition for review of petitioner Stephanie Nordlinger was denied by the California Supreme Court on February 28, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

APPLICABILITY OF 28 U.S.C. § 2403(b)

28 U.S.C. § 2403(b) may be applicable to this case.

STATUTES/CONSTITUTIONAL PROVISIONS INVOLVED

1. Article XIII of the California Constitution provides:

Sec. 1. Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value.

2. The full text of Article XIII A of the California Constitution (popularly known as "Proposition 13") is set

forth in the Appendix at C. The relevant portion of the text includes the following:

Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.

Section 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

3. United States Constitution, Article XIV, Section 1 provides:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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PETITION FOR WRIT OF CERTIORARI

**PETITION FOR A WRIT OF CERTIORARI
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THE STATE OF CALIFORNIA**

The petitioner Stephanie Nordlinger respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal of the State of California, entered in the above-entitled proceedings on December 3, 1990 and for which review was denied by the California Supreme Court on February 28, 1991.

STATEMENT OF FACTS

A. Proposition 13's Operation.

California's Proposition 13, enacted by constitutional amendment in 1978, operates in most respects like a traditional current market value (ad valorem) property tax system. Under a traditional system, property is assessed for tax purposes at its current market value, and then a tax rate is applied to the assessment. If the property either increases or decreases in market value, the tax assessment is adjusted to reflect the change in value. Proposition 13 works in the same manner except that it places a cap on any *increases* in the assessment of real property until the property changes ownership or is newly constructed.

The system works as follows. Proposition 13, which is codified as Article XIII A of the California Constitution, limits the maximum property tax rate to 1% of assessed value.¹ As in a current market value system, newly purchased or constructed property is assessed at its market value, which most typically is equal to its purchase price.² If property *declines* in market value below the initial assessment, Proposition 13 continues to operate identically to a traditional ad valorem system and the property is assessed downward to reflect its actual value. If, as has been more typical, the property *increases* in value, Proposition 13 departs from an ad valorem system by limiting any annual increase in the assessment to the lesser of 2% or the rate of inflation. Only

¹Petitioner Nordlinger does not challenge the validity of the 1% tax rate cap, nor Proposition 13's other tax limitation provisions not relevant here. See Appendix C for full text. Proposition 13 allows the tax rate to exceed 1% only to pay for voter-approved indebtedness.

²Rather than assessing properties purchased prior to 1975 at their purchase value, Proposition 13 rolled back assessments for all these properties from their value in 1978 (when Proposition 13 was enacted) to their 1975-76 value. In all other respects, pre- and post-1975 property is treated the same.

upon the sale of the property is the assessment increased to reflect the actual value of the property. New construction also triggers a reassessment, but only of the newly constructed portion of the property.

This cap on assessment increases for already owned property, combined with the cap's removal upon sale of the property or new construction, is commonly referred to as a "welcome stranger" provision. The label reflects the fact that long-time property owners enjoy very low property taxes that typically reflect outdated, relatively low assessments, while newcomers to the neighborhood are saddled with a disproportionately high share of the tax burden.³

Under Proposition 13's welcome stranger scheme, because real estate appreciation throughout California has been so rapid, the tax disparities between new and long-time property owners have become especially extreme. In many parts of Los Angeles County, for example, new property owners pay property taxes commonly 10, 12, 15, 17 and as much as 583 times more than long-time owners⁴ simply because they purchased their properties at different times.

³See, e.g., Comment, *Hellerstein v. Assessor of the Town of Islip: A Response to Inequities in Real Property Assessments in New York*, 27 Syracuse L. Rev. 1045, 1061 (1976) (labelling a reassessment-on-transfer method of property taxation a "welcome stranger" pattern") (citations omitted); "Justices Take Up Tax Issue That May Imperil Prop. 13," *Los Angeles Times*, Dec. 8, Part 1, at 12, col. 1 (labelling Webster County assessment scheme a "welcome stranger" method).

⁴The term "long-time property owners" is used throughout this petition to refer to property owners who have owned their property since at least 1975. Because Proposition 13 rolled back tax assessments in 1978 for all property purchased prior to 1975 to the fair market value assessment as of the 1975-76 tax year, any property owner who has owned his or her property continuously since 1975 enjoys the greatest savings under Proposition 13. The disparities to which petitioner refers throughout this petition are based on comparisons between tax assessments for property owners who have owned their property since 1975, and those who purchased their property fourteen years later in 1989, the year this action was filed. See note 6, *infra* for a description of the studies from which the disparities were drawn.

B. Stage in the Proceedings/Manner in Which the Federal Questions Were Raised Below.

Petitioner Nordlinger filed her complaint on September 18, 1989 in Los Angeles County Superior Court seeking a declaratory judgment that the welcome stranger assessment provisions of Proposition 13 violate the federal equal protection clause, as elaborated by this Court's January 1989 decision in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster Co., W. Va.*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989). On October 25, 1989, after exhausting her administrative remedies as required under California law, petitioner Nordlinger amended her complaint to include a claim for refund of unconstitutionally collected property taxes. See *Nordlinger*, 225 Cal.App.3d at 1266-68, 275 Cal.Rptr. at 687-88.

Respondents Los Angeles County and its Assessor demurred to plaintiff's First Amended Complaint on November 16, 1989 on the ground that, even accepting petitioner's allegations as true, California's system of property taxation does not violate the federal constitution. *Id.* at 1267, 275 Cal.Rptr. at 688. Petitioner Nordlinger opposed the demurrer, and sought leave to amend her complaint to include additional factual allegations to support her claim, as supported by extensive studies of Los Angeles County tax disparities, and also sought to clarify certain of the legal allegations. *Id.*

(continued)

Approximately 46% of all houses in existence in 1975 remain in the same hands and thus retain a 1975-76 base year tax assessment (modified only by the 2% annual increase Proposition 13 allows). See "Joint Appendix In Lieu of Court Prepared Transcript" filed with District 2 of the California Court of Appeal in *Nordlinger v. Lynch*, 2 Civil BO48719 at Volume II, page 377 (hereafter "II J.A. 377"). Of course, Proposition 13's discriminatory system imposes disproportionate taxes on all relatively recent buyers, while all longer term owners enjoy relative benefits, but the discrimination is most vividly seen at the extremes and accordingly petitioner's studies focused on them.

On January 29, 1990 the superior court sustained respondents' demurrer without leave to amend on the ground that it was bound by the California Supreme Court's 1978 decision in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 149 Cal.Rptr. 239 (1978). See Appendix D (Minute Order of Los Angeles County Superior Court). The state supreme court in *Amador* had upheld Proposition 13 just after its passage against facial equal protection and right to travel challenges, long before the extreme disparities of the past twelve years had developed. The *Amador* decision was not appealed to this Court.

Petitioner Nordlinger then appealed the superior court decision to the California Court of Appeal, which sustained the ruling. See *Nordlinger*, 225 Cal.App.3d 1259, 275 Cal.Rptr. 684. Explicitly recognizing the "unfairness" caused by the welcome stranger approach, the court of appeal observed that "it is not reasonably disputable that article XIII A has resulted in gross disparities in the assessments of properties with comparable market values" *Id.* at 1271, 1275, 275 Cal.Rptr. at 690, 693. Nevertheless, the intermediate appellate court reluctantly considered itself bound by the California Supreme Court's *Amador* decision: "Our duty as an intermediate appellate court is to follow the decisional law laid down by the state Supreme Court. We violate jurisdictional bounds when we do otherwise." *Id.* (citations omitted).

Petitioner Nordlinger petitioned the state supreme court for review of the court of appeal decision, and that petition was denied on February 28, 1991. See Appendix at B. On the same day, the California Supreme Court also denied the petition for review in a commercial entity's challenge to Proposition 13's assessment provisions. *R.H. Macy & Co., Inc. v. Contra Costa County*, 226 Cal.App.3d 352, 276 Cal.Rptr. 530, rev. den. (1991). Macy's petitioned this Court for a writ of certiorari on April 15, 1991 (No. 90-1603).

C. Property Tax Assessment Disparities Resulting From Proposition 13's Operation.

After many years of saving, petitioner Stephanie Nordlinger in November 1988 purchased her first home, a small tract house in the very modest Baldwin Hills section of Los Angeles, for \$170,000.⁵ In 1975, while petitioner rented an apartment and saved for a down payment, other comparable Baldwin Hills houses were selling for about \$32,000. If she had been financially able to enter the housing market and buy her house then, her property taxes under Proposition 13 would now cost her only \$412 annually. Instead, because she could not purchase until late 1988, her property taxes in 1989 (her first full year of paying taxes on her home) totalled \$1,700. *Nordlinger*, 225 Cal.App.3d at 1267, 275 Cal.Rptr. at 687.

During the first ten years of owning her new home, petitioner Nordlinger's property taxes will approach \$19,000, while her neighbors who bought like homes in 1975 will pay only \$4,500. Thus, solely because she did not (indeed could not) purchase her home until 1988, Nordlinger will pay fully \$14,500 more in property taxes during the next decade than her neighbors, who live in comparable houses, receive the same public services and facilities, and make mortgage payments less than one-fifth of hers.

California's unfair welcome stranger tax scheme imposes even harsher and more discriminatory burdens on new home buyers in other Los Angeles neighborhoods. For example, a 1989 home buyer in Santa Monica (who was typical of many others in that and other rapidly appreciating neighborhoods) paid 1989 property taxes of \$4,650, while his neighbors who bought comparable homes in the mid-1970s paid as little as \$270 for the 1989 tax year. II J.A. 269, ¶ 32. The recent Santa Monica purchaser will thus pay the tax collector almost \$51,000 during the next decade for

⁵The median home price in Los Angeles County at that time was approximately \$225,000. II J.A. 257.

exactly the same public services and facilities that his neighbors who own virtually identical homes will get for the bargain price of \$3,000—a difference of \$48,000!

Such gross disparities are extremely common throughout Los Angeles County. In support of her proposed second amended complaint, petitioner Nordlinger presented extensive studies to the superior court, based largely on the Los Angeles County tax assessor's records, that documented these disparities.⁶ The studies show, for example, that 1989 purchasers of homes in many neighborhoods in Los Angeles County, including much of the San Fernando Valley, the Pasadena area and western Los Angeles, commonly pay property taxes 12 times higher than long-time owners of comparable homes in the same neighborhoods. Recent buyers in other parts of Los Angeles County commonly pay taxes 8, 10, 12, 15 and 17 times higher than the taxes paid by long-time homeowners in the same neighborhood. *See Nordlinger*, 225 Cal.App.3d at 1268-69, 275 Cal.Rptr. at 688; I J.A. 109.

Moreover, these long-time property owners are holding assets of tremendous value, yet paying 1991 taxes based on outdated and highly favorable 1975 market prices and values.

⁶These studies, performed by economist David Gold, included a "County Cross-section Study" and a "Neighborhoods Study." Together, the studies analyzed more than 10,000 recent property sales. The County Cross-section Study analyzed by computer every property sale in Los Angeles County in the month of August 1989. For every sale, it calculated the disparity between the new owner's assessment and the prior owner's assessment for the very same property, by comparing the sales price (the new owner's assessment) to the assessment immediately before the sale (the prior owner's assessment).

The Neighborhoods Study intensively researched particular neighborhoods. It compared the assessments on recent buyers and long-time owners of tightly comparable homes common in the neighborhood, recording the disparity levels seen repeatedly between these new and long-time owners. The Neighborhoods Study then cross-checked the computerized analysis of these neighborhoods with field visits by appraisal professionals. *See* I J.A. 106, II J.A. 366.

In contrast, new home buyers must pay taxes on the full current market value at a time when it is very difficult even to enter the housing market and to assume the large mortgage payments occasioned by these inflated prices. These new buyers typically purchase their homes because they need to move from other homes and apartments due to life changes such as marriage, divorce or a change in family size, not because they desire more luxurious accommodations. See *Nordlinger*, 225 Cal.App.3d at 1270, 275 Cal.Rptr. at 689.

As inflation has diluted the value of the dollar, Proposition 13's welcome stranger provision has delivered *annual real tax cuts* to long-time owners, (subsidized by newcomers), because inflation has generally far exceeded the 2% maximum annual upward adjustment allowed by Proposition 13. Thus, in Los Angeles, pre-1978 homeowners paid 61% more in real dollars on their first tax bills under Proposition 13 than they do today, and their taxes continue to fall. See I J.A. 155.

Extreme disparities in taxes paid by recent Los Angeles County purchasers of other types of properties are also common. By far the greatest disparities are on still-undeveloped lots, which are commonly 50:1 and more and even reach a staggering 583:1. Many such raw lots, considered unbuildable in 1975, are now ready for development as changes in zoning, accessibility and/or technology have made them worth hundreds of thousands of dollars. See *Nordlinger*, 225 Cal.App.3d at 1269, 275 Cal.Rptr. at 689; I J.A. 111, 112. Residential income (apartment) and commercial property tax disparities commonly range between 8:1 and 9:1, reaching as high as 11:1. I J.A. 113, 114. Pertinent tables and graphs summarizing disparities commonly found among residential and other properties in various Los Angeles County

neighborhoods presented in the exhibits below are included as Appendix E.

Glaring inequities among similarly situated property owners are not, by any means, confined to the same neighborhoods. For example, after only a dozen years of Proposition 13's operation, the long-time owner of a stately 7,800 square foot, seven-bedroom mansion on a huge lot in Beverly Hills (among the most luxurious homes in one of the most expensive neighborhoods in Los Angeles County), depicted in photograph A below, already pays *less* property tax annually than the new homeowner of a tiny 980 square foot home on a small lot more than a mile from the beach in an extremely modest neighborhood, depicted in photograph B below. II J.A. 402, 403.



PHOTOGRAPH A — BEVERLY HILLS HOME



PHOTOGRAPH B — VENICE HOME

Likewise, petitioner Nordlinger's 1988 property tax assessment on her very modest Baldwin Hills tract home is almost identical to that of a pre-1975 owner of a fabulous beach-front Malibu residential property worth \$2.1 million, even though her property is worth only 1/12th as much as his. *Nordlinger*, 225 Cal.App.3d at 1268, 275 Cal.Rptr. at 688.

These dramatic inequities will soon grow even worse. Even if the appreciation rate of Southern California real estate permanently plunges to the level of the most conservative investments, residential disparities greater than 26:1 will be commonplace within ten years. *Id.* at 1269, 275 Cal.Rptr. at 689. If, instead, property continues to appreciate at the rate it has since the Proposition 13 baseline year of 1975, continuing the pattern of boom and lull that has occurred during that time, within ten years many new home buyers will be paying 70 to 80 times the taxes of their stay-put neighbors. 1 J.A. 130, 131.

Ironically, the greatest beneficiaries of this system are the wealthy. They enjoy not only the largest *absolute* savings, but also the largest *relative* savings because market value appreciation has been far greater in the wealthy communities of Los Angeles County than in the poor communities, as the graphs set out in Appendix E show. Thus, long-time homeowners in Beverly Hills, where properties have appreciated by 1600%, pay an effective tax rate of as little as 1/12th of 1% of the present value of their homes, while comparable long-time owners in Watts, where the appreciation rate has been only 600%, pay a rate more than twice as high, at 1/5th of 1% of their homes' value. Indeed, under Proposition 13's harshly discriminatory provisions, recent home buyers who can afford only tiny bungalows in Los Angeles County's most crime-ridden and depressed areas of Watts and Compton commonly pay as much in property taxes as owners of spacious \$1 million homes in the wealthy sections of Santa Monica, Pacific Palisades and Beverly Hills who purchased fourteen years ago and earlier. Although the Watts bungalows are worth a fraction of the coastal properties and the Watts residents are far less able to pay than their wealthier counterparts, their property taxes are the same. 1 J.A. 109, 128, 141, 151-52, 178-81.

REASONS FOR GRANTING THE WRIT

I.

THIS COURT'S 1989 ALLEGHENY DECISION EXPLICITLY RECOGNIZED THE POTENTIAL CONSTITUTIONAL INFIRMITIES OF PROPOSITION 13'S WELCOME STRANGER PROVISION, BUT LEFT OPEN THE IMPORTANT FEDERAL QUESTION OF WHETHER A LEGISLATIVELY ENACTED SYSTEM THAT GROSSLY DISCRIMINATES AGAINST NEW PROPERTY OWNERS IS VALID.

In 1989, this Court struck down a Webster County, West Virginia property tax scheme that operated almost identically

to Proposition 13. *Allegheny Pittsburgh Coal Co. v. County Commission of Webster Co., W. Va.*, 488 U.S. 336, 109 S.Ct. 633, 102 L.Ed.2d 688 (1989). In so holding, the Court expressly recognized that its ruling casts doubt on the validity of California's method. The Court, however, left open the question of whether the fact that California has enacted such a tax scheme generally, on a statewide basis, rather than as the "aberrational" policy of one county assessor, saves Proposition 13 from constitutional defect. The Court stated:

We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as "Proposition 13."

Allegheny, 488 U.S. at 344 n.4, 109 S.Ct. at 638 n.4.

In practice, California's Proposition 13 works almost identically to the unconstitutional Webster County property tax scheme. As in California, the Webster County assessor based assessments on the fair market value of the property as of the most recent date of purchase. Additionally, every two or three years, the assessor increased by as much as 10% the assessed value of parcels that had not changed hands, a slightly greater increase than the 2% annual adjustment Proposition 13 allows. Just as in California, the Webster County reassessments never came close to approximating the actual market value of the property, until a change of ownership triggered a reassessment. *Id.* at 338, 109 S.Ct. at 635. This West Virginia tax assessment scheme resulted in dramatic tax differences between properties based simply on the date the parcels were purchased, with Webster County disparities commonly in the range of 8:1 and ranging as high as 20:1 and 35:1. *Id.* at 341, 109 S.Ct. at 637. As described above, Proposition 13 has resulted in similar but more extreme tax disparities.

The West Virginia Supreme Court upheld the Webster County practice when it was challenged as a violation of state law.⁷ This Court found, however, that the welcome stranger scheme violated the federal equal protection clause by failing to achieve "the seasonable attainment of a rough equality in the tax treatment of similarly situated property owners." *Id.* at 343, 109 S.Ct. at 638.

The only difference between the Webster County, West Virginia and California property tax schemes is that West Virginia's state constitution mandates a current market value system, within which the Webster County assessor *administratively imposed* a "welcome stranger" assessment method, *see id.* at 338, 109 S.Ct. at 635, whereas California's constitution mandates a current market value system with a *legislatively imposed* "welcome stranger" provision.

The important federal question presented by this case is whether the distinction between California's and West Virginia's scheme of taxation has constitutional significance. In other words, can a state, consistent with the federal equal protection clause, use a current market value system with a *legislatively imposed* cap on increases in assessments for already owned property, when the federal constitution prohibits a local assessor from *administratively imposing* a cap that works in the very same manner?

A. This Court Found That Webster County's Welcome Stranger Provision Discriminates Against Taxpayers in the Same Class Who Must Receive Equal Tax Treatment.

In evaluating whether Webster County's welcome stranger provision violated the equal protection rights of those

⁷*See In re Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d 560, *rev'd on other grounds*, *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336, 109 S.Ct. 633 (1989).

property owners who were taxed at the full market value of their property, this Court discussed the different judicial tests used to measure a property tax scheme's constitutionality, depending upon the nature of the property tax system at issue. If a state has categorized taxpayers differently so that, for example, corporations pay a 2% tax rate and homeowners pay a 1% rate, as long as a suspect classification or fundamental right is not involved, the classification will be sustained if the "divisions and burdens are reasonable."⁸ *Allegheny*, 488 U.S. at 344, 109 S.Ct. at 638; see *Lenhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973) (upholding Illinois *ad valorem* tax on personalty of corporations even though individuals were exempt).

If, conversely, a state has established a uniform system that treats all taxpayers in the same manner, *i.e.*, that applies the same tax rate and method of establishing assessed value to all taxpayers, then the state must "seasonabl[y] attain[] . . . a rough equality in the tax treatment of similarly situated property owners." *Allegheny*, 488 U.S. at 343, 109 S.Ct. at 638. Put another way, "intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." *Id.* at 345, 109 S.Ct. at 639.⁹

This Court rejected the Webster County assessor's attempt to justify as rationally based the use of a welcome stranger method of taxation, holding that the Webster County assessor

⁸For a discussion of the heightened level of scrutiny to which Proposition 13 should be subject because it interferes with the fundamental right to travel, see Section II at 27, *infra*.

⁹See also *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352-53, 38 S.Ct. 495, 496, 62 L.Ed. 1154 (1918); *Sioux City Bridge v. Dakota County*, 260 U.S. 441, 445-46, 43 S.Ct. 190, 191-92, 67 L.Ed. 340 (1923); *Cumberland Coal Co. v. Board of Tax Revision of Tax Assessments in Greene County, Pa.*, 284 U.S. 23, 28-29, 52 S.Ct. 48, 50-51, 76 L.Ed. 146 (1931).

subjected properties within the *same* class to widely different taxes solely because of when each property was purchased. *Id.* at 343-45, 109 S.Ct. at 637-38. Where only one class of taxpayers is established, the Court held, the equal protection clause requires that taxpayers within that class receive roughly equal treatment, an equality the Webster County assessor failed to attain seasonably.

B. Because the Distinctions Between Proposition 13 and the Webster County Taxation Method Have No Constitutional Significance, California Must Seasonably Achieve a Rough Equality in Tax Treatment of Like Properties.

In practice, California's Proposition 13 and Webster County's method of taxation work in a nearly identical manner. Two possible differences between the two schemes have been alluded to. The court of appeal decision here relied on the California Supreme Court's earlier *Amador* opinion to suggest that there is a *substantive* difference between the two systems—California has adopted a so-called "acquisition value" scheme, whereas Webster County operated under West Virginia's traditional current market value system. See *Nordlinger*, 225 Cal.App.3d at 1278, 275 Cal.Rptr. at 695. Similarly, this Court in *Allegheny* noted a *procedural* difference between the two methods of taxation—namely that California enacted its welcome stranger provision legislatively, through a statewide vote, rather than administratively, as in Webster County. 488 U.S. at 244 n.4, 109 S.Ct. at 638 n.4. As discussed below, there is no substantive difference between the two property tax schemes, and the procedural difference has no constitutional significance.

1. There Is No Substantive Distinction Between the Webster County and California Property Tax Systems.

Despite the stark parallels between the Webster County and California property tax systems, the court of appeal below concluded that it was bound by the 1978 California Supreme

Court's *Amador* decision that had upheld Proposition 13's welcome stranger provision against a facial attack just after its enactment.¹⁰ Recognizing its role as an intermediate court of review, the court of appeal explained:

[I]t is the function of the California Supreme Court, rather "than of any state court subordinate to it, to announce changes in what has hitherto been treated within the state as the settled law with respect to constitutionality [under the United States Constitution] of a given application of a state statute, *unless indeed there be so exact a parallel between a particular case presented and a controlling decision of a federal court*, that no reasonable distinction between them can be made."

Nordlinger, 225 Cal.App. at 1275, 275 Cal.Rptr. at 693 (emphasis in original). As the "reasonable distinction" compelling it to follow *Amador*, the court of appeal noted that this Court in *Allegheny* had characterized the West Virginia Constitution as mandating a *current market value* tax assessment system, whereas the state supreme court's *Amador* decision had characterized Proposition 13 as implementing a new *acquisition value* system. *Nordlinger*, 225 Cal.App.3d at 1278, 275 Cal.Rptr. at 695. Because California had adopted a "new assessment method based on "acquisition value," the intermediate court found *Allegheny* inapposite. It relied instead on the *Amador* finding that as

¹⁰The *Amador* Court decided the constitutionality of the welcome stranger provision in the context of a sweeping facial challenge, where the equal protection challenge was apparently little more than an afterthought. The petitioners' brief focused on numerous other questions of state constitutional law, relegating the equal protection challenge to only three and one half pages as part of an Appendix to the main brief and relying on hypothetical disparities assumed to exist as of 1978. See Petitioners' Points and Authorities in Support of Petition for Extraordinary Relief in the Nature of Mandamus, filed June 9, 1978, California Supreme Court, in the case of *Amador Valley Joint Union High School District v. State Board of Equalization*, Appendix B at 106-09.

long as California can advance an "arguably reasonable basis" for Proposition 13, it will pass constitutional muster. *Id.* at 1272, 275 Cal.Rptr. at 69.

Using the euphemistic "acquisition value system" label to describe California's property tax system completely ignores the fact that California's system, like Webster County's, continues to be a traditional current market value property tax system with a welcome stranger provision simply grafted onto it. Article 13 of the California Constitution states that "[a]ll property is taxable and shall be assessed at the same percentage of fair market value." See Cal. Const. art. XIII, § 1(a) (West Supp. 1991). California's assessment provision is nearly identical to that imposed by the West Virginia Constitution, which "establishes a general principle of uniform taxation so that all property, both real and personal, shall be taxed in proportion to its value." *Allegheny*, 488 U.S. at 338, 109 S.Ct. at 634. Indeed, California still uses a current market value system in all instances *except* when long-time property owners would otherwise experience a tax increase. Thus Proposition 13 uses current market value as the measuring stick for establishing a newly purchased property's initial tax assessment¹¹; it uses current market value if the property declines in value; and it uses current market value to assess new construction. The *Amador* court in 1978 recognized that Proposition 13 creates a uniform system of taxation that treats all taxpayers in "precisely the same manner." *Amador*, 22 Cal.3d at 235, 149 Cal.Rptr. at 251. See also *State Board of Equalization v. Bd. of Supervisors*, 105 Cal.App.3d 813, 164 Cal.Rptr. 739 (1980) (Proposition 13 is only a limit on the pre-existing fair market value system, not a new system).

In actuality, only when current market value works to the detriment of long-time property owners (*i.e.*, when their tax assessments will rise) is its usage in California abandoned through the welcome stranger overlay. The Webster County

¹¹For property purchased prior to 1975, its value is assessed as of the 1975-1976 tax year. See note 2, *supra*.

method operated in precisely the same way. The assessor used current market value as the measuring stick to assess property in all instances *except* when already owned property increased in value. There is no substantive distinction between the way in which the Webster County and Proposition 13 welcome stranger provisions operate.

Because California and the Webster County assessor used the same type of property tax assessment systems, Proposition 13 must be measured by *Allegheny's* "rough equality" standard, unless a possible procedural distinction alluded to by this Court—the manner in which the welcome stranger provision was grafted onto the current market value system—saves it from challenge.

2. The Fact That California Legislatively Adopted Its Statewide Welcome Stranger Provision Whereas Webster County Imposed Its Welcome Stranger Provision Administratively Makes No Constitutional Difference.

California's legislative adoption of its welcome stranger provision by statewide vote should not insulate it from complying with the equal protection clause. If the federal equal protection clause prohibits Webster County's assessor from administratively grafting a welcome stranger provision onto its current market value system, then so should California be prohibited from taking the same action legislatively. Indeed, in many respects, California's legislatively enacted provision is more, not less, constitutionally offensive than Webster County's administratively enacted provision.

Webster County's assessor used a property's purchase price to assess its taxable value, and then periodically reassessed parcels that had not changed hands recently by as much as 10% every several years in an attempt to tax properties "based on some perception of the general change in area property

values." *Allegheny*, 488 U.S. at 343, 109 S.Ct. at 637. Although the assessor never came close to taxing owners of comparable properties equally (indeed this Court noted that, if left untouched, the assessment method would result in owners of comparable parcels paying equal property taxes only after 500 years of adjustment, 488 U.S. at 341-42, 109 S.Ct. at 637), at least the assessor possessed the administrative discretion to achieve equal treatment.

In California, by contrast, an assessor has no discretion at all to equalize property taxes; he or she may increase the assessed value of property that has not changed hands by only 2% annually. Because real estate appreciation after Proposition 13's enactment has far outpaced this minimal 2% annual increase, the assessed value of property held since 1975 does not, and will likely never, come close to the assessed value of recently purchased comparable property assessed at its actual market value. California's assessors can do nothing about the gross disparities this system has created to date and will create even more dramatically over time; the state constitution has tied their hands. In Webster County, it may have taken 500 years to equalize property taxes, but in California, where the welcome stranger provision is for all practical purposes etched into stone in the state constitution, property taxes will never be equalized.¹²

¹²Nor is Proposition 13 likely to be overturned by a subsequent vote of the people. At least 46% of all homes existing in 1975 have not changed hands, and thus retain their extremely low property tax assessments. Furthermore, the California voters have been carving loopholes from the reassessment-upon-transfer provision that are designed to insulate longtimers from the harshness of the welcome stranger provision's impacts. For example, parents may transfer property valued at up to \$1 million to their children without a reassessment, thereby guaranteeing that some California property will retain assessments based on 1975 values for generations to come. See art. XIII A § 2(h); Cal. Rev. & Tax. Code § 63.1 (West Supp. 1991). Similarly, taxpayers 55 years or older may sell their homes and purchase new ones of equal or lesser value and retain their old property tax assessments. See art. XIII A § 2(a), Cal. Rev. & Tax. Code § 69.5

The fact that the people of California voted to impose a welcome stranger provision on themselves should also make no federal constitutional difference. As this Court has long recognized, "it is plain that the electorate as a whole, whether by referendum or otherwise, could not order . . . action violative of the Equal Protection Clause." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 448, 105 S.Ct. 3249, 3259, 87 L.Ed.2d 313 (1985); see also *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. at 352, 38 S.Ct. at 495, 62 L.Ed. 1154 (1918) (the equal protection clause serves "to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents") (emphasis supplied). Indeed, the self-serving nature of Proposition 13's welcome stranger provision makes the voters' motives particularly suspect. Not accidentally, Proposition 13 imposes very low taxes on those individuals fortunate enough to have owned California property at the time of its enactment, while forcing newcomers—including those too young to vote in 1978, those who could not afford to own property, and new migrants

(West Supp. 1991). Thus, like those who have owned property continuously since 1975, those property taxpayers who fit into the new exceptions have an interest in retaining the present system. Finally, by its very nature Proposition 13 is virtually guaranteed political immortality: at any given moment, at least 50% of property owners are its beneficiaries, who pay artificially low taxes while their newer neighbors pay a vastly disproportionate share. The court of appeal below specifically recognized this reality, noting that "It is questionable . . . whether a majority of the electorate ever will be sufficiently aggrieved to repeal article XIII A's . . . assessment method." *Nordlinger*, 225 Cal.App.3d at 1282 n.11, 275 Cal.Rptr. at 698 n.11.

to the state—to pay 10, 15, 17 and even 583 times the taxes paid by the longtimers.¹³

Additionally, the procedural appropriateness of the manner by which the welcome stranger provision was grafted onto the current market value system in Webster County and in California, respectively, was, and is not, a part of this Court's federal question inquiry. In *Allegheny*, the West Virginia Supreme Court concluded that the petitioners' challenge to the Webster County assessor's welcome stranger administrative practice did not state a cause of action under West Virginia state law. *In re Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d at 560. Similarly, the California Supreme Court has determined that the voters acted within their state constitutional authority when they enacted Proposition 13. *Amador*, 22 Cal.3d at 229, 232, 149 Cal.Rptr. at 247, 250 (Proposition 13 did not violate the "single subject" or "constitutional revision" limitations on statewide ballot measures). In both cases, state law issues relating to the means by which the welcome stranger provision was promulgated are not properly this Court's concern in conducting its analysis.¹⁴ The form or mode of promulgation—administra-

¹³Notably, the Webster County welcome stranger provision, although administratively imposed, was indirectly endorsed by a vote of the people: the assessor is elected by popular vote every four years and the policy continued over multiple elective terms. See W. Va. St. § 3-1-17 (West 1991); *Allegheny*, 488 U.S. at 344, 109 S.Ct. at 638 (noting that property tax disparities caused by the welcome stranger scheme "have continued for more than 10 years with no changes").

¹⁴As a matter of administrative law, courts have traditionally viewed statewide legislative bodies as having somewhat greater authority to establish policy and make policy distinctions than do state or local administrative officials. See *State Board of Equalization*, 105 Cal.App.3d at 819, 820, 164 Cal.Rptr. at 743. As a matter of state administrative law, therefore, the West Virginia or California appellate courts ordinarily might be somewhat more willing to allow the operation of their current market value systems to be altered legislatively through the addition of a welcome stranger assessment cap than administratively. This is a state law issue, however, and, in fact, both state appellate courts upheld their respective welcome stranger modifications under state law.

tive in one instance, legislative in the other—was concededly within the scope of the authority granted by state law, and consequently should not have federal constitutional significance.

Given that this Court has found unconstitutional a property tax scheme that in practice operates identically to California's and has no constitutionally significant procedural distinctions, California's scheme should also logically be found unconstitutional, unless the state can advance some very compelling justifications for its scheme. Yet neither the state, the California courts, nor the original sponsors of Proposition 13 have ever justified the gross disparities that California's welcome stranger provision imposes on new home buyers and frequent movers.

3. Proposition 13's Grossly Discriminatory Reassessment-on-Transfer Provision Cannot Be Justified on Any Grounds.

No legitimate public policy rationale explains why one California resident must pay tens of thousands of dollars more in taxes over a decade than his or her next-door neighbors who live in nearly identical homes and who receive the same public services and facilities. Nor can the welcome stranger provision's proponents justify why a California family that is forced to move from one part of the state to another sees its property taxes multiply by a factor of ten or more, even though it buys a home comparable to or even smaller than the family's old one. Indeed, if Proposition 13 had stated openly that the effect of its operation would be that properties purchased in 1975 would be subject to a tax rate of only 1/17th of 1%, while equally valuable properties purchased fourteen years later would be taxed at the full 1% rate, the unfair discrimination and the resulting equal protection violation would be blatant and obvious. No one would even *attempt* to justify such

discrimination.¹⁵ That the patently discriminatory effects of Proposition 13 are masked by being set forth in the *reassessment* provisions of the statute rather than in its *tax rate* provisions does not make the discrimination any more justifiable. See *City of Rancho Cucamonga v. Mackzum*, 228 Cal.App.3d 929, 279 Cal.Rptr. 220, 227 (1991) ("Inequality of taxation is produced as surely by inequality of valuation as by inequality of the rate of tax.") (citations omitted).

The 1978 *Amador* decision cited several theoretical arguments to justify Proposition 13, including tax limitation, avoiding taxes on "paper profits," and promoting certainty and predictability. 22 Cal.3d at 235, 149 Cal.Rptr. at 251. These *Amador* arguments, however, logically support only Proposition 13's 1% limit on taxes (not at issue here) and its rollback to 1975 assessment levels adjustable up to 2% annually. They in no way explain or support Proposition 13's reassessment-on-transfer provision and its resulting huge disparities.

Proposition 13 could have attained the three articulated benefits *and still fully avoided these huge disparities* had it been enacted without the reassessment-on-transfer provision. For example, Proposition 13 could have assessed and taxed new buyers at the same 1975 base levels (adjusted 2% annually) that their predecessors and other existing owners enjoy. Under such a tax system, all property taxpayers would equally obtain the three identified tax benefits that Proposition 13 ostensibly promotes. Without the reassessment-on-transfer provision, however, Proposition 13 would have bankrupted local government in the long run, because it would have granted to everyone the same annual tax cuts (in inflation-adjusted terms) that the welcome stranger provision gives only to longtimers. The groups organized by the authors of

¹⁵Even if this Court were to determine that a rational basis test rather than the *Allegheny* "rough equality" test should apply to the measure's constitutionality, the state has not provided a rational justification for Proposition 13's discrimination.

Proposition 13, the Howard Jarvis Taxpayers Association and Paul Gann's Citizens Committee, expressly conceded this in their amicus curiae brief filed in this case in the state court of appeal. Such a result, however, would admittedly have been fiscally irresponsible. Proposition 13's draftsmen thus acknowledged that they created the welcome stranger provision for one purpose only: to provide "ever increasing property tax revenues to local governments."¹⁶ But this justification could be used to support any discriminatory tax since all taxes raise revenues.¹⁷

The *Amador* court also suggested that the welcome stranger provision is justifiable because it is somehow related to a taxpayer's ability to pay. 22 Cal.3d at 235, 149 Cal.Rptr. at 251. This suggestion, however, is wholly belied by the disparities that have subsequently developed during the past dozen years. By including reassessment provisions that rely on value as of time of purchase (with the paltry 2% annual adjustment) to assess taxes year in and year out, Proposition 13's welcome stranger provision over time completely destroys any relationship whatsoever between a taxpayer's property

¹⁶Amicus Curiae Brief of Howard Jarvis Taxpayers Association and Paul Gann's Citizens Committee in Support of Respondents, filed in District 2 of the California Court of Appeal in *Nordlinger v. Lynch*, 2 Civil BO48719, at 4, 7-8.

¹⁷Notably, the posited goal of providing minimally adequate levels of tax funding for local government, while still obtaining the benefits of predictability and tax limitation, could easily be achieved while utilizing any of several fair, even-handed schemes that do not harshly discriminate against newcomers. For example, each county could reassess all property up to its current market value and then lower the overall tax rate, while still raising the same amount of revenue. Under this "revenue neutral" scheme, all taxpayers would pay the same reduced tax rate on the market value of their properties. In Los Angeles County, the across-the-board residential tax rate would be immediately lowered to 0.44%. See *Nordlinger*, 225 Cal.App.3d at 1269 n.4, 275 Cal.Rptr. at 689 n.4. Alternatively, the state could apply Proposition 13's 1% tax rate to the current market value of all property (with reassessments seasonably performed), but simply defer collection of the taxes imposed on the increase in market value until the property is sold or transferred.

taxes and his or her ability to pay. The houses pictured on pages 9-10, *supra*, vividly demonstrate the complete absence of any present link between the value of a house as of its purchase date and the ability of its owners to pay the taxes based on that value. If the state is actually concerned with ability to pay as a basis for creating discriminatory classifications, it properly should use a measure with some demonstrable link to present ability to pay, such as income level or disability, not a time-based measure that over time utterly destroys any once arguably valid link.¹⁸

Until the amicus brief by the Jarvis and Gann committees was filed in the state court of appeal in this case, the true policy underlying the reassessment-on-transfer provision had never been so starkly articulated. The welcome stranger scheme was designed solely to ensure that the totality of the increase in revenues necessary to finance local government (beyond a paltry 2%) would come from newcomers, movers, first-time home buyers and all others recently entering the housing market. Compounding this blatantly inequitable tax scheme, Proposition 13 forces these newcomers not only to fund entirely the steadily growing local government tax base, but also to provide tidy annual subsidies to the oldtimers—allowing existing property owners, in effect, to obtain yearly tax cuts measured by the difference between the actual rate of inflation and the 2% annual increase.

¹⁸California has programs in place to protect property owners who truly lack the ability to pay their property taxes. Property tax assistance is available to taxpayers whose household income is less than \$20,000, see Cal. Rev. & Tax. Code 20514 (West Supp. 1991), while a postponement of property taxes is offered to all taxpayers who are at least 62 years old, blind or disabled and have household incomes of \$24,000 or less. See Cal. Rev. & Tax. Code § 20585 (West Supp. 1991).

C. Proposition 13's Welcome Stranger Provision Fails Woefully to Achieve, Seasonably or Ever, a Rough Equality in the Tax Treatment of Comparable Property.

As should be abundantly clear from the above discussion, California uses a method of property taxation that not only operates in a nearly identical manner to the unconstitutional Webster County scheme, but produces even worse discriminatory results. The California Court of Appeal in this case specifically acknowledged that "a revisiting of [the California Supreme Court's] *Amador* [decision upholding Proposition 13] may be appropriate" given the huge disparities and resulting unfairness that have developed in the intervening twelve years, but the court of appeal determined that it lacked the institutional power to do so. *Nordlinger*, 225 Cal.App. at 1275, 275 Cal.Rptr. at 693. By denying review, the California Supreme Court avoided the politically sensitive question of reconsidering the constitutionality of Proposition 13. No court, therefore, has determined in the face of these massive inequities whether California's present reassessment-on-transfer practices intentionally and systematically violate the equal protection rights of millions of its property taxpayers.

This Court realized the importance of the federal question involved when a single West Virginia county assessor was discriminating against a relative handful of recent property purchasers by administratively imposing a welcome stranger scheme of taxation. The Court should now resolve the even more compelling federal question of whether California can discriminate against millions of its property owners by legislatively imposing the very same method of taxation.

II.

THIS COURT'S CONSISTENT REJECTION OF STATE STATUTES THAT BASE EVEN THE MOST MINIMAL GOVERNMENTAL BENEFITS ON DATE OF RESIDENCY RAISES THE IMPORTANT FEDERAL QUESTION OF WHETHER THE ENORMOUSLY DISPROPORTIONATE BURDEN ON NEWCOMERS CAUSED BY CALIFORNIA'S REASSESSMENT—UPON—TRANSFER PROVISION VIOLATES THE RIGHT TO TRAVEL.

Every time in the last decade that this Court has examined statutes classifying individuals on the basis of timing or length of state residence in order to distribute governmental benefits or burdens, it has invalidated the statutes. *See Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 106 S.Ct. 2317, 90 L.Ed.2d 899 (1986) (invalidating a civil service preference provided only for veterans who resided in New York at the time they entered the military); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 105 S.Ct. 2862, 86 L.Ed.2d 487 (1985) (striking down a property tax exemption only for Vietnam veterans who resided in New Mexico prior to May, 1976); *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309, 72 L.Ed.2d 672 (1982) (declaring unconstitutional Alaska's method for distributing its oil revenues based on the number of years a citizen resided in state). It has done so either because the classification impeded the right to migrate, or because the state could not provide sufficient justification to meet an invigorated rational basis test.

California's welcome stranger provision imposes far greater burdens on newcomers than do any of the statutes struck down in *Zobel*, *Hooper*, and *Soto-Lopez*. For many new California residents, the disproportionate burden imposed by Proposition 13's reassessment-on-transfer provision totals thousands of dollars per year. By contrast, the veterans'

property tax preference struck down in *Hooper* was worth approximately \$40 per year. 472 U.S. at 614, 105 S.Ct. at 2864.¹⁹ Moreover, the statutes in *Hooper*, *Zobel*, and *Soto-Lopez* each involved benefits, not burdens.

When invalidating statutes that use the timing or length of state residence to distribute government benefits or burdens, this Court's underlying concern has been the selfish incentive for a state to "take care of 'its own' . . ." *Hooper*, 472 U.S. at 623, 105 S.Ct. at 2868. This tendency undermines one of the most fundamental, longstanding principles of the federal constitution—to promote our federalist system through free migration to and from the various states. The Court has stressed time and again "the unquestioned historic acceptance" of principles of free migration. *Soto-Lopez*, 476 U.S. at 902, 106 S.Ct. at 2320.

The court of appeal below erroneously concluded that, because it was theoretically possible for people to be long-time California homeowners before they move to California, no impermissible burden on the right to travel exists. *Nordlinger*, 225 Cal.App.3d at 1281, 275 Cal.Rptr. at 697. But very few of us can afford to own a home we don't live in, and virtually no new migrants arrive in California as long-time California homeowners. American citizens desiring to move to California must either give up the American dream of owning a home, or must accept the grossly disproportionate tax burden imposed by the reassessment-on-transfer provision of Proposition 13. They can never gain entry into the most favored group of pre-1975 owners and their heirs. For these reasons, date of home ownership is far too close a proxy for date of residency to allow such enormously disproportionate burdens to stand.

Zobel makes clear that the court of appeal reasoning below was incorrect. In *Zobel*, Alaska apportioned its oil revenues

to residents in proportion to the length of time they had been there since 1959, see 457 U.S. at 57, 102 S.Ct. at 2311, just as California now apportions its property tax burdens in proportion to the length of time an owner has owned California property since 1975. A resident of Alaska received a \$50 dividend for each year he or she had resided in state since 1959. *Id.* Noting that the Alaska scheme "creates fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the state," the Court invalidated the statute. *Id.* at 59, 102 S.Ct. at 2312. The Court pointed out that not only did the Alaska scheme discriminate against newcomers to the state, it also discriminated among long-time and even native-born Alaskans. *Id.* at 59 n.5, 102 S.Ct. at 2312 n.5. If Alaska were allowed to distribute public revenues in such a discriminatory way, the Court asked, "could states impose different taxes based on length of residence? Such a result would be clearly impermissible." *Id.* at 64, 102 S.Ct. at 2315.

Proposition 13 results in the same kind of discrimination between otherwise bona fide residents based on when they purchase property. New migrants to the state and California natives too young or otherwise unable to buy property in 1975 are all treated much less favorably than long-time residents, a "clearly impermissible" result under *Zobel*. Had Alaska conditioned the distribution of its oil dividends upon the length of time a person had resided at a particular *address* or in a particular *county*, the constitutional violation undoubtedly would have been at least as serious.

Proposition 13's welcome stranger provision forces long-time owners who wish to move to choose between staying put while enjoying vastly subsidized tax rates, or moving and paying rates that subsidize others. Along with the human costs of preventing freedom of movement, these distortive market signals also impair economic efficiency, impeding

¹⁹ Assuming a 2% tax rate on the \$2,000 property tax exemption.

business attempts to adapt to economic change by interfering with their ability to attract employees to new locations.

If this Court determines that Proposition 13's welcome stranger provision impedes the right to travel, then the provision is sustainable only if it furthers a compelling state purpose. *See Soto-Lopez*, 476 U.S. at 904, 106 S.Ct. at 2321.²⁰ If the state can achieve the same purposes in a less discriminatory manner, then it must use a less constitutionally offensive tax scheme. *See Dunn v. Blumstein*, 405 U.S. 330, 343, 92 S.Ct. 995, 1003, 31 L.Ed.2d 274 (1972) ("[s]tatutes affecting constitutional rights must be drawn with 'precision' ") (citations omitted). As discussed above, California has not even offered a rational basis justification for its discriminatory welcome stranger provision and its resulting discrimination against newcomers, let alone provided a compelling reason to do so. Moreover, petitioner Nordlinger has pointed out several alternative tax schemes that achieve the same goals without impeding the right to travel.

CONCLUSION

For the reasons set forth above, this Court should grant the petition for certiorari.

Respectfully submitted,

CARLYLE W. HALL, JR.
HALL & PHILLIPS

²¹ The Court has been divided on the question of exactly which provision of the Constitution gives rise to the right to travel. Justice O'Connor has argued forcefully that the right arises from the privileges and immunities clause of article IV. *See Zobel*, 457 U.S. at 71, 102 S.Ct. at 2319 (O'Connor, J. concurring). Other Justices have suggested that the right is grounded in the equal protection clause. *See Soto-Lopez*, 476 U.S. at 902 n.2, 106 S.Ct. at 2320 n.2. Regardless of its source, the Court has been unified in requiring that a state support any statute that interferes with the right to travel with compelling justifications. *See e.g., id.* at 904 n.4, 106 S.Ct. at 2322 n.4 ("Laws which burden th[e] right [to travel] must be necessary to further a compelling state interest"); *Zobel*, 457 U.S. at 76-78, 102 S.Ct. at 2321-2322, (O'Connor, J. concurring) (describing stringent two-part test that a state must meet to overcome a right to travel challenge).

APPENDICES

CERTIFIED FOR PUBLICATION

**In the Court of Appeal
of the State of California
SECOND APPELLATE DISTRICT
DIVISION THREE**

STEPHANIE NORDLINGER,
an individual

Plaintiff and Appellant,

v.

JOHN J. LYNCH, in his capacity
as Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES

Defendants and Respondents.

2d Civil No. B048719
(Super. Ct. No. C738781)
[Filed Dec. 3, 1990]

APPEAL from an order of the Superior Court of Los Angeles County. David Workman, Judge, Affirmed.

Hall & Phillips, Carlyle W. Hall, Jr., Mary Louise Cohen and Ann E. Carlson; Brent N. Rushforth, for Plaintiff and Appellant.

De Witt W. Clinton, County Counsel, David L. Muir, Senior Deputy County Counsel, and Albert Ramseyer, Senior Associate County Counsel, for Defendants and Respondents.

Ajalat & Polley, Charles R. Ajalat, Terry L. Polley and Richard J. Ayoob; Mayer, Brown & Platt and Michael W. McConnell; Howarth & Smith and Don Howarth; Barash & Hill, Alexander H. Pope, T. Larry Watts and Richard

APPENDIX A

A. Kolber; William K. Rentz, Amici Curiae on behalf of Plaintiff and Appellant.

John K. Van de Kamp, Attorney General, Arthur C. De Goede, and Assistant Attorney General; Ronald A. Zumbrun, Anthony T. Caso and Johathan M. Coupal; Trevor A. Grimm, General Counsel, Los Angeles, Amici Curiae on behalf of Defendants and Respondents.

Plaintiff and appellant Stephanie Nordlinger (Nordlinger) appeals an order of dismissal following the sustaining without leave to amend of a demurrer to her first amended complaint. The demurrer was interposed by defendants and respondents John J. Lynch in his capacity as Tax Assessor for Los Angeles County (the Assessor) and the County of Los Angeles (sometimes collectively referred to as the Assessor).

SUMMARY STATEMENT

A dozen years have elapsed since California voters launched the so-called "tax revolt" and adopted Proposition 13 by a wide margin, adding article XIII A to the California Constitution.¹ In the intervening years, some disenchantment has set in with the "welcome stranger" clause, which bases real property assessments on acquisition cost rather than on current value. Generally, this system disproportionately burdens recent purchasers of real property, whose property is assessed at full current value, and favors longtime property owners, whose assessments reflect their outdated acquisition values. Articles and editorials have questioned the fairness of the acquisition value approach, especially as to younger persons, first-time home buyers and newcomers to the State.

While disillusionment with Proposition 13 and the welcome stranger aspect in particular has been mounting, it was the

¹All further article and section references are to the California Constitution, unless otherwise specified.

recent United States Supreme Court opinion in *Allegheny Pitt. v. Webster County* (1989) ____ U.S. ____ [102 L.Ed.2d 688] (*Allegheny*), which provided the impetus for the present attack on Proposition 13. Some of the language used by the court in *Allegheny* has emboldened the Proposition 13 critics. They rely on such phrases as "[t]he constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." (*Id.*, p. 697.) They also invoke *Allegheny's* related requirement "to seasonably dissipate the remaining disparity between [older] assessments and the assessments based on a recent purchase price." (*Ibid.*) Observers additionally point to *Allegheny's* pronouncement that "[i]ntentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of [those] taxed upon the full value of [their] property." (*Id.*, at p. 698.)

Taken out of context, these statements appear to apply to the fact situation brought before this court by the plaintiff herein, Nordlinger, and the amici curiae on her behalf.² This challenge has compelled this court to consider whether *Allegheny* has undermined *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208 (*Amador*), wherein the California Supreme Court upheld the constitutionality of article XIII A.

After a thorough analysis, we conclude *Allegheny* does not prohibit the states from adopting an acquisition value assessment method. *That decision merely prohibits the arbitrary enforcement of a current value assessment method.* Because *Allegheny* is inapposite, *Amador* remains controlling.

²Amicus curiae briefs in support of Nordlinger have been filed by the Building Industry Association of Southern California, Inc. and attorneys William K. Rentz and Charles R. Ajalat.

The State Board of Equalization, Howard Jarvis Taxpayers Association and Paul Gann's Citizen's Committee have filed amicus briefs in support of the Assessor.

Any modification of the provisions of Proposition 13 is for the political process, not the courts. The order of dismissal therefore is affirmed.

FACTUAL & PROCEDURAL BACKGROUND

1. *Key provisions of article XIII A in controversy.*

At the June 1978 primary election, the electorate adopted Proposition 13, thereby adding article XIII A to the California Constitution. The initiative measure changed the system of real property taxation and imposed important limitations upon the assessment and taxing powers of state and local governments. (*Amador, supra*, 22 Cal.3d at p. 218.)

Article XIII A provides in relevant part at section 1: "(a) The maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the full cash value of such property."

The article defines "full cash value" in two ways: "the county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, *thereafter*, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation." (Art. XIII A, 2, subd. (a), *italics added*.)

The full cash value base thereafter may be adjusted to "reflect from year to year the inflationary rate not to exceed 2 percent for any given year . . . , or may be reduced to reflect . . . a decline in value." (Art. XIII A, 2, subd. (b).)

2. *The reassessment of Nordlinger's home reflected the acquisition cost.*

As gleaned from the papers filed, Nordlinger purchased her first home on November 1, 1988, after living in rental property for 25 years and saving her money. She paid \$170,000 for the subject property, located in the Baldwin Hills area of Los Angeles. The residence is part of a tract of single

family homes which was developed in 1947. It measures 1,114 square feet and is situated on a 8,200 square foot lot.

The previous owners, the Smiths, had purchased the property in 1986 for \$121,500. While the Smiths owned the property, its assessed value was based on their \$121,500 purchase price. In early 1989, the Assessor sent Nordlinger a notice of assessed value change and a joint consolidated supplemental tax bill which reflected a reassessment of the property to the new acquisition value of \$170,000. The ownership change resulted in a tax increase on an annual basis of \$454.

Nordlinger paid the tax bill "under protest." She then unsuccessfully filed a verified application for reduction of assessment and claim for refund with the Assessment Appeals Board.

3. *The complaints.*

After filing an original complaint on September 28, 1989, Nordlinger filed a first amended complaint against the Assessor on October 25, 1989, seeking declaratory relief pursuant to Revenue and Taxation Code section 4808³ and a refund of property taxes. We summarize the essential allegations as follows:

The fair assessed value of Nordlinger's property was \$30,000, taking into account the assessment of comparable properties in the neighborhood. For example, one neighbor's home contains square footage identical to Nordlinger's and sits on a lot which is 900 square feet larger than Nordlinger's. That home is assessed at \$35,820 based on its 1975 valuation.

³Revenue and Taxation Code section 4808 allows any taxpayer to seek declaratory relief alleging the locally assessed property taxes have been illegally or unconstitutionally assessed or collected. The section is applicable only in instances where the alleged illegality occurred "as the direct result of a change in . . . law that became effective not more than 12 months prior to the date the action is initiated by the taxpayer." (Rev. & Tax. Code, § 4808.)

Another neighbor's home is 44 square feet greater than Nordlinger's on a lot 1,040 square feet larger than Nordlinger's. That home is assessed at \$36,107 based on its 1975 valuation. Thus, Nordlinger's annual property tax is nearly five times that paid by these neighbors on their comparable properties.

The examples reveal the welcome stranger approach of Proposition 13 has resulted in gross disparities in the assessed values of generally comparable properties. In 1978, immediately after the adoption of Proposition 13, the tax disparity between similar properties purchased in 1978 and those owned since 1975-76 was approximately 1.4 to 1. In 1989, the disproportionate assessments averaged 5 to 1 in Los Angeles County, while in certain neighborhoods, such as Venice, the disparity was 15 to 1, or more. As property values increase in the future, Proposition 13's discriminatory impact against more recent purchasers will be magnified.

Proposition 13 was promoted as a means of limiting government spending and making property taxes fair and within the ability of taxpayers to pay. However, it created an arbitrary system which imposed disparate tax burdens on owners of similarly situated properties without regard to the use of the real property, the burden the property placed on the government, the actual value of the property, or the financial means of the property owner.

The first cause of action sought a declaratory judgment that article XIII A is unconstitutional insofar as it requires owners of similarly situated properties to be taxed disparately.

The second cause of action sought an \$896 refund of property taxes for 1988-89.

4. *The demurrer.*

The Assessor demurred to both causes of action on the ground *Amador* had determined the provisions of article XIII A do not violate the equal protection guarantees of the state and federal constitutions.

The Assessor also demurred to the first cause of action on the ground it was time-barred because the original complaint was not filed within 12 months after article XIII A became effective, as required by Revenue and Taxation Code section 4808.

5. *Nordlinger's opposition papers.*

Nordlinger's opposition memorandum maintained *Amador* was not controlling because it merely involved a facial challenge to Proposition 13 shortly after its adoption, and no evidence of actual disparities was presented in that case. Nordlinger further contended the dramatic disparities created by Proposition 13's welcome stranger tax assessment method had been rendered unconstitutional by *Allegheny*. In addition, the Revenue and Taxation Code section 4808 claim was timely because the action was filed within nine months of *Allegheny*, which effectively superseded *Amador*.

Alternatively, Nordlinger urged that if the trial court were to sustain the demurrer, she should be permitted to amend her complaint to include allegations based on further updated and extensive studies of property tax inequities in Los Angeles County. Allegations based on those studies would demonstrate the level of disparities generated by Proposition 13 between longtime property owners and recent purchasers of similarly situated real property range as high as 500 to 1 for unimproved parcels.

The proposed amendment also would allege Proposition 13 treats very different taxpayers as similar; consequently, in 1988 her modest Baldwin Hills tract home was assessed at virtually the same value as a Malibu beachfront home worth \$2.1 million, 12 times more than her home, but purchased prior to 1976. Finally, the amended pleading would describe in detail Proposition 13's burden on interstate travel, which burdens could not be justified by any compelling state interest.

a. *Evidence of gross disparity between pre-1975 owners and new purchasers of property to support proposed second amended complaint.*

Nordlinger's extensive opposition memorandum was supported by ample evidence of the distortions created by Proposition 13 and expanded on the allegations set forth in her complaint.

Her papers included, inter alia, the declaration of David Gold, a consultant. Gold conducted an economic study to evaluate the magnitude of real property tax disparities between Nordlinger's property and similar neighboring properties acquired before 1975, as well as disparities in other neighborhoods within Los Angeles County.

Gold determined Nordlinger paid approximately five times more in property taxes than the average paid by the owners of 18 similar neighboring properties. Further, the disproportionate assessments in many neighborhoods were even greater. For example, in Venice, the ratio of the tax paid by a 1989 purchaser to the tax paid on a comparable home by a pre-1975 owner was 13:1. In Beverly Hills, the ratio was 12:1. Gold observed these disparities would become even more pronounced over time. He projected that even if the annual rate of appreciation in home values were to drop to 9.5 percent, a 13 to 1 differential would increase to 26 to 1 in just 10 years.

Gold observed that not only are individuals who own comparable homes taxed at disparate levels, but properties that vary greatly in value are taxed at similar levels. Due to Proposition 13's welcome stranger approach, the owner of a 7,800 square foot, 7 bedroom residence on a 28,000 square foot lot in Beverly Hills paid less in property tax than the owner of a 980 square foot Venice home on a 3,100 square foot lot.

Gold found additional disparity in that the property tax on longtime owners had fallen by 38 percent in real terms

because Proposition 13 allows at most a 2 percent annual increase in assessments, far below the rate of inflation. In 1978, the median price of an existing home in Los Angeles County was about \$68,600. Its general property tax levy based on 1 percent of that value was \$686. With a 2 percent annual increase, the 1989 tax bill on such property was \$852. Had the original \$686 tax bill kept pace with inflation, the 1989 tax bill would have been \$1,372.

Nordlinger also offered the declaration of Robyn S. Phillips, an assistant professor of economics. A related exhibit indicates that in 1989, only 38 percent of single family residences in Los Angeles County had a 1975 base year value. That percentage had fallen from 45.2 percent three years earlier. Phillips concluded that for all single family homes in the County in 1989, the average assessed value was 44 percent of market value.⁴

Nordlinger also submitted a supporting declaration by Alexander H. Pope who served as tax assessor for the county between 1978 and 1986. According to Pope, there were many vacant lots on the tax rolls assessed at a 1975 base year value of less than \$1,000. Those values were depressed because the lots were unbuildable hillside or canyon lots, or lacked road access, or the required Coastal Commission permits were unattainable. Many of the properties are now worth \$100,000 or more because construction technology has improved, roads have been built, and Coastal Commission permits are more readily available.

b. *The proposed second amended complaint.*

The proposed second amended complaint set forth detailed factual allegations of disparity. It additionally pled, inter alia,

⁴Based thereon, Nordlinger submits that if all properties were reassessed to current market value, the County could lower its residential property tax rate from 1.0 percent to 0.44 percent without any loss in tax revenues.

that most people move due to necessity involving marriage, divorce, the death of a spouse, alteration of family size or a job change. Thus, Proposition 13 discriminates against new home purchasers in favor of longtime homeowners. It also discourages and penalizes individuals who wish to migrate within California or to migrate here from other states. Further, it penalizes those individuals who were not old enough to own property in 1975 and those who lacked the means to do so.

6. *The assessor's reply memorandum.*

The Assessor argued Nordlinger's equal protection and right to travel challenges were disposed of by *Amador*. Article XIII A met the rational basis test because it protected homeowners on fixed incomes, including disabled and retired persons, from being taxed on the appreciated value of their homes. In addition, Proposition 13 was rational because it allowed a new purchaser to predict the future taxes on the property.

Further, Nordlinger's other constitutional argument was unavailing because the right to travel guarantee only precludes the discriminatory distribution of government benefits. In addition, Nordlinger's Revenue and Taxation Code section 4808 claim was time-barred because *Allegheny* did not address Proposition 13 and therefore did not result in a change of law.

7. *The trial court's ruling.*

The matter was heard on January 29, 1990. By stipulation, the demurrer was deemed to have been brought by both named defendants. Citing *Amador* and Revenue and Taxation Code section 4808, the trial court sustained the demurrer without leave to amend on the grounds stated in the moving papers and ordered dismissal of the first amended complaint. The order of dismissal was filed on February 23, 1990. This appeal followed.

CONTENTIONS

Nordlinger contends: (1) *Amador* is not controlling because gross tax disparities among comparable property owners had not yet developed and merely a facial attack on Proposition 13 was presented to that court; (2) *Allegheny* invalidates a welcome stranger approach that imposes grossly disproportionate taxes on similarly situated property taxpayers; (3) because *Allegheny* is on point, it is binding on this court notwithstanding *Amador*; and (4) article XIII A is infirm because it impedes interstate and intrastate travel without a compelling state reason.⁵

DISCUSSION

1. *Standard of appellate review.*

The function of a demurrer is to test the sufficiency of a pleading by raising questions of law. (*Buford v. State of California* (1980) 104 Cal.App.3d 811, 818.) When a demurrer is sustained, we determine whether the complaint states facts sufficient to constitute a cause of action. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The allegations are regarded as true and are liberally construed with a view to attaining substantial justice. (*Schaeffer v. State of California* (1970) 3 Cal.App.3d 348; *King v. Central Bank* (1977) 18 Cal.3d 840, 843.)

In addition, relevant matters which are properly the subject of judicial notice may be treated as having been pled. (*Helix*

⁵The extensive briefing by amici curiae largely reiterates the respective arguments of the parties, which we discuss *infra*. Additionally, Attorney Ajalat's brief urges article XIII A, section 2, violates the commerce clause of the Federal Constitution. (U.S. Const., art. I, § 8.) Said issue is presently pending in the First District Court of Appeal in *R. H. Macy & Co., Inc. v. Contra Costa County* (No. A049789), which case involves commercial real property. (Evid. Code, §§ 452, subd. (d), 459.) However, the commerce clause issue is outside the scope of homeowner Nordlinger's action and we do not reach it.

Land Co. v. City of San Diego (1978) 82 Cal.App.3d 932, 937.) Because we find it is not reasonably disputable that article XIII A has resulted in gross disparities in the assessments of properties with similar current market values, we take judicial notice of that fact and treat it as having been pled. (Evid. Code §§ 542, subd. (h), 459.) We thereafter consider whether *Allegheny* renders such alleged disparities constitutionally infirm.

Where, as here, a demurrer is sustained without leave to amend, we decide whether there is a reasonable possibility the defect can be cured by amendment. If not, there has been no abuse of discretion and we must affirm. (*Blank v. Kirwan, supra*, 39 Cal.3d at p. 318.)

2. *The Amador decision.*

The California Supreme Court rendered its decision in *Amador* in September 1978, just three months after the adoption of Proposition 13. The petitioners therein, who were various governmental agencies and concerned citizens, alleged actual or potential adverse effects resulting from the adoption and operation of the article. (*Amador, supra*, 22 Cal.3d at pp. 218-219.) They raised multiple constitutional challenges, including contentions based on the federal equal protection clause (U.S. Const., 14th Amend., § 1), and the right to travel (*Associated Home Builders etc., Inc. v. City of Livermore* (1976) 18 Cal.3d 582). (*Amador, supra*, at pp. 232-238.) The Supreme Court concluded article XIII A survived each of the substantial challenges which had been raised and denied the petitions. (*Id.*, at p. 248.)

a. *Equal protection of the laws.*

The *Amador* petitioners argued the rollback of assessed valuation to the 1975-76 fiscal year would result in invidious discrimination among owners of similarly situated property. By reason of the rollback provision, two substantially identical homes located side-by-side and receiving identical govern-

mental services, could be assessed and taxed at different levels depending on their date of acquisition. Petitioners contended such a disparity in tax treatment constituted arbitrary discrimination in violation of the federal equal protection clause. (*Amador, supra*, 22 Cal.3d at pp. 232-233.)

Preliminarily, the Supreme Court observed the equal protection challenge "arguably, is premature . . . , and we could decline to consider the issue in the abstract and instead await its resolution within the framework of an actual controversy wherein the disparity is pivotal." (*Amador, supra*, 22 Cal.3d at p. 233.) Nonetheless, the Supreme Court chose to reach the merits, "elect[ing] to treat the equal protection issue as constituting an attack upon the face of the article itself, because the assessors throughout this state must be advised whether to follow the new assessment procedure." (*Ibid.*)

Amador recognized the equal protection challenge required it to scrutinize article XIII A under the deferential rational basis standard. (*Amador*, 22 Cal.3d at p. 233.) Under that standard, so long as a system of taxation "is supported by a rational basis, and is not palpably arbitrary," it will be upheld. (*Id.*, at p. 234; *Kahn v. Shevin* (1974) 416 U.S. 351, 356, fn. 10 [40 L.Ed.2d 189]; *Allied Stores of Ohio v. Bowers* (1959) 358 U.S. 522, 527 [3 L.Ed.2d 480].) Further, a state tax law is not arbitrary although it discriminates in favor of a certain class if the discrimination is founded upon "a reasonable distinction, or difference in state policy," not in conflict with the Federal Constitution." (*Amador, supra*, 33 Cal.3d at p. 234; *Kahn v. Shevin, supra*, 416 U.S. at pp. 355-356.)

Petitioners relied upon a line of cases which held, as a general proposition, that the *intentional, systematic undervaluation* of property similarly situated with other property assessed at its full value amounted to a deprivation of equal protection. (*Amador, supra*, 22 Cal.3d at p. 234; see *Cumberland Coal Co. v. Board* (1931) 284 U.S. 23, 28

[76 L.Ed. 146]; *Sioux City Bridge v. Dakota County* (1923) 260 U.S. 441, 445 [67 L.Ed. 340]; *Hillsborough v. Cromwell* (1946) 326 U.S. 620, 623 [90 L.Ed. 358].)

Amador held those cases arising in other jurisdictions were inapposite because they involved constitutional or statutory provisions which *mandated* the taxation of property on a *current value* basis, while article XIII A provides that all property, except property acquired prior to 1975, is to be assessed at its *acquisition value*. (*Amador, supra*, 22 Cal.3d at p. 235.) Further, the states were not confined to a current value system under equal protection principles. (*Id.*, at pp. 235-237.) Thus, an acquisition value system will be sustained if it is founded upon some rational basis. (*Id.*, at p. 235.)

Amador found a rational basis for the acquisition value approach. Such assessment method relates the annual tax to the original cost of the property rather than to an unforeseen and perhaps unduly inflated current value. It also allows each property owner to estimate future tax liability with substantial certainty. (*Amador, supra*, 22 Cal.3d at p. 235.) Further, the acquisition value approach of article XIII A was not unique in concept. Sales tax on personal property similarly is based on acquisition cost. Thus, two consumers may pay different taxes on substantially identical personal property, depending upon the exact sales price and the availability of a discount. (*Id.*, at pp. 235-236.)

Moreover, the acquisition value approach was rational despite the fact article XIII A deems persons who acquired property prior to 1975 to have purchased it during 1975. While the selection of the 1975-76 fiscal year as a base year was seemingly arbitrary, it was comparable to a grandfather clause and an earlier cut off date reasonably might have been considered both administratively unfeasible and incapable of producing adequate tax revenues. (*Amador, supra*, 22 Cal.3d at p. 236.)

In sum, there is no requirement that property of equal current value must be taxed equally, regardless of its original

cost. (*Amador, supra*, 22 Cal.3d at p. 236.) Because an acquisition value approach, by which a property owner's tax liability bears a reasonable relation to the acquisition cost, is neither wholly arbitrary nor irrational, article XIII A met the demands of the equal protection clause. (*Id.*, at p. 237.)

b. *Alleged right to travel impairment.*

The *Amador* petitioners also contended article XIII A would impair the fundamental right to travel because nonresidents or newly arrived residents would be subject to higher property taxes than established residents. As a result, property owners would be deterred from relocating. (*Amador, supra*, 22 Cal.3d at p. 237.)⁶

Amador rejected the right to travel challenge, observing travel was no more inhibited under the new system which established a more fixed and stable measure of taxes, than under the former system. The change from a current value system to an acquisition system was intended to benefit all property owners, past and future, resident and nonresident, by reducing inflationary pressures in assessments, by limiting tax rates, and by permitting the taxpayer to make a more careful and accurate prediction of future tax liability. (*Amador, supra*, 22 Cal.3d at p. 238.)

⁶The *Amador* petitioners relied on *Associated Home Builders etc., Inc. v. City of Livermore, supra*, 18 Cal.3d at page 602, which held legislation is subject to strict scrutiny if it directly burdens the right to travel by distinguishing between nonresidents or newly arrived residents on the one hand and established residents on the other and imposing penalties and disabilities on the former group. However, legislation which does not penalize travel but merely makes it more difficult for the outsider to establish a residence in the place of his or her choosing is scrutinized under a rational relationship test. (*Id.*, at pp. 602-604; see *Amador, supra*, 22 Cal.3d at p. 237.)

3. *Amador* binding on this court unless *Allegheny* is directly on point.

We are unpersuaded by Nordlinger's argument this court is not bound by *Amador*'s rejection of the equal protection and right to travel challenges because that case involved a mere facial attack on article XIII A's welcome stranger provision without any evidence of actual disparities.

First and foremost, while *Amador* found the equal protection contention "arguably . . . premature," it proceeded to rule on the merits of the issue after expressly "declin[ing] to . . . await its resolution within the framework of an actual controversy" (*Amador*, *supra*, 22 Cal.3d at p. 233.)

In addition, it can hardly be said the present disparities complained of by Nordlinger and offered in great detail in her pleadings were totally unforeseen by the *Amador* court. That decision plainly anticipated disparities in assessments of comparable properties would increase over time. In discussing the impact of an acquisition cost approach, *Amador* quite specifically recognized a property acquired in 1977 for \$80,000 would incur double the tax of a similar property acquired just two years earlier for \$40,000. (*Amador*, *supra*, 22 Cal.3d at p. 235.) The *Amador* decision is not rendered invalid by the fact the expected disparities generated by article XIII A have since materialized.

Further, the binding force of *Amador* is not diminished by any unfairness which has developed from the acquisition value system. In upholding article XIII A against the equal protection challenge, *Amador* alluded to fairness as an ingredient of equal protection and observed an acquisition value system "may operate on a *fairer* basis than a current value approach." (*Amador*, *supra*, 22 Cal.3d at p. 235, italics added.) If article XIII A has turned out to be unfair as forcefully argued by Nordlinger and the amici curiae on her side, a revisiting of *Amador* may be deemed appropriate. However, *Amador*'s failure to perceive any potential unfairness of an acquisition value approach does not permit this court to depart from that decision.

Therefore, unless the United States Supreme Court's subsequent decision in *Allegheny* is *directly on point*, we are bound by the California Supreme Court's decision in *Amador* upholding article XIII A against federal constitutional challenges based on equal protection and the right to travel. (*Birkhofer v. Krumm* (1938) 27 Cal.App.2d 513, 536-537.)

In *Birkhofer*, as here, the Court of Appeal was urged to diverge from California Supreme Court authority due to developments in United States Supreme court decisional law. *Birkhofer* declined to depart from California precedent, explaining it is the function of the California Supreme Court, rather "than of any state court subordinate to it, to announce changes in what has hitherto been treated within the state as the settled law with respect to constitutionality [under the United States Constitution] of a given application of a state statute, *unless indeed there be so exact a parallel between a particular case presented and a controlling decision of a federal court*, that no reasonable distinction between them can be made." (*Birkhofer v. Krumm*, *supra*, 27 Cal.App.3d at pp. 536-537, italics added.)

Thus, "[w]e are not permitted to violate stare decisis for the sake of straws in the wind. Our duty as an intermediate appellate court is to follow the decisional law laid down by the state Supreme Court. We violate jurisdictional bounds when we do otherwise. (*Auto Equity Sales, Inc. v. Superior Court* [1962] 57 Cal.3d 450 [20 Cal.Rptr. 321, 369 P.2d 937].)" (*Beckman v. Mayhew* (1975) 49 Cal.App.3d 529, 535.)

With these principles in mind, we turn to the *Allegheny* decision.

4. *Allegheny* case summary

The West Virginia Constitution guarantees to its citizens that with certain exceptions, "taxation shall be *equal and uniform* throughout the State, and all property, both real and personal, shall be *taxed in proportion to its value . . .*" (W.Va. Const., art. X, § 1, italics added.)

Notwithstanding this principle of uniformity, the tax assessor of West Virginia's Webster County valued the properties of petitioner coal companies on the basis of their recent purchase price but made only minor modifications in the assessments of comparable land which had not been recently sold. The assessor fixed yearly assessments for property within the county at 50 percent of appraised value, and determined appraised value by using the declared consideration at which a property was last sold. This practice resulted in gross disparities in the assessed value of generally comparable properties. Petitioners' properties were assessed at 8 to 35 times the value of comparable properties which had not recently changed hands. As to certain property, the county's gradual adjustment policy would have required more than 500 years to equalize the assessments. (*Allegheny, supra*, 102 L.Ed.2d at pp. 693-696.)

To resist petitioners' equal protection challenge, Webster County argued its assessment scheme was rationally related to its purpose of assessing properties at true current value. When available, it made use of accurate information about the market value of a property—the price at which it was recently purchased. As that data grew stale, it periodically adjusted the assessment based on some perception of the general change in local property values. (*Allegheny, supra*, 102 L.Ed.2d at pp. 696-697.)

Allegheny rejected Webster County's proffered rationale, observing that the equal protection clause prohibits "taxation which in fact bears unequally on persons or property of the same class." (*Allegheny, supra*, 102 L.Ed.2d at p. 697.) West Virginia's Constitution and laws provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the state according to its estimated market value. (*Id.*, at p. 698.) Use of a general adjustment as a transitional substitute for an individual reappraisal did not violate equal protection as long as the general adjustments were sufficiently accurate over a short period of time to equalize the differences in proportion between the assessments of a class of property

holders. (*Id.*, at p. 697.) "[T]he constitutional requirement is the seasonable attainment of a rough equality in tax treatment of similarly situated property owners. [Citations.]" (*Ibid.*, italics added.) Webster County's adjustments to the assessments of property not recently sold were too small "to seasonably dissipate the remaining disparity between these assessments and the assessments based on a recent purchase price." (*Ibid.*, italics added.)

Further, it is established that " '[i]ntentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property.' [Citations.] 'The equal protection clause . . . protects the individual from state action which selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class.' [Citation.]" (*Allegheny, supra*, 102 L.Ed.2d at p. 698, italics added.)

Allegheny found the relative undervaluation of comparable property within Webster County was systematic and intentional. The assessor's arbitrary practice, which based petitioners' assessments upon the full market value of their property, while assessing comparable property pursuant to outdated values, had denied petitioners equal protection under West Virginia law. (*Allegheny, supra*, 102 L.Ed.2d at pp. 698-699.)

In a footnote toward the end of the opinion, *Allegheny* briefly acknowledges California's article XIII A without addressing its constitutionality. The footnote states: "We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as 'Proposition 13.' Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred, constructed upon, or, in a limited manner for

inflation. Cal. Const., Art XIII A, § 2 (limiting inflation adjustments to 2% per year.) The system is grounded upon the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." (*Allegheny, supra*, 102 L.Ed.2d at p. 698, fn. 4.)

5. *Allegheny decision inapposite.*

Allegheny plainly is unavailing to Nordlinger because by adopting article XIII A, California has opted for an assessment method based on each individual owner's acquisition cost.

In marked contrast, the West Virginia Constitution requires property to be taxed at a uniform rate statewide according to its estimated *current market value*. (*Allegheny, supra*, 102 L.Ed.2d at p. 698.) *Allegheny's* holding must be viewed in that context. Thus, *Allegheny* does not stand for the general proposition that a welcome stranger approach which bases assessed value on acquisition cost violates equal protection. Nor does *Allegheny* hold that large disparities in the assessments of properties with similar current market values are unconstitutional per se.

Rather, *Allegheny* reiterates the principle that intentional undervaluation by state officials of other property in the *same class* contravenes the equal protection clause. (*Allegheny,*

supra, 102 L.Ed.2d at p. 698.)⁷ If state law mandates a current market value assessment method, the state may not discriminate against new purchasers by only reassessing recently acquired property. To satisfy the equal protection clause, a state which has chosen a market value approach must "seasonably dissipate" disparities between the assessments of property not recently sold and assessments based on a recent purchase price. (*Allegheny, supra* 102 L.Ed.2d at p. 697.)

Because California law provides for an acquisition value assessment method, Nordlinger's reliance on *Allegheny's* striking down of an arbitrarily enforced current value method is misplaced. Further, nothing in *Allegheny* calls into question *Amador's* rejection of the right to travel challenge. Accordingly, we remain bound by *Amador* on both of these constitutional questions.

⁷See for example, *Sunday Lake Iron Co. v. Wakefield* (1918) 247 U.S. 350 [62 L.Ed. 1154], cited by *Allegheny, supra*, 102 L.Ed.2d at pages 697, 698. In *Sunday Lake*, an inexperienced local assessor adopted the \$65,000 valuation which his predecessor had placed upon the taxpayer's property. Subsequently, the Michigan legislature passed an act to appraise all mining properties, and plaintiff's property was reassessed to \$1,071,000. Because of an alleged lack of time and inadequate information, the state board of tax assessors declined to order a new and general survey of values or generally to increase other assessments, although plaintiff contended other properties were being assessed at no more than one-third of their market value. The following year, a diligent and successful effort was made to rectify any inequality. (*Sunday Lake Iron Co., supra*, 247 U.S. at pp. 352-353.)

Sunday Lake declared intentional systematic undervaluation by state officials of other property "in the same class" contravenes the constitutional right of those taxed upon the full value of their property. However, it found no denial of equal protection because the assessor did not intentionally violate the essential principle of practical uniformity. (*Sunday Lake Iron Co., supra*, 247 U.S. at pp. 352-353.)

- a. *Article XIII A comports with settled equal protection principles as reiterated in Allegheny.*

Allegheny reiterates the prohibition on discrimination against property owners who are similarly situated within the *same class*. Article XIII A complies with that principle. California does not discriminate against similarly situated property owners because each owner's assessment is based on acquisition cost.

Further, *Allegheny* recognized "[t]he States, . . . , have broad powers to impose and collect taxes. A State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable. *Allied Stores [of Ohio v. Bowers]* (1959) 358 U.S. 522] 526-527, . . ." (*Allegheny, supra*, 102 L.Ed.2d at p. 697.)⁸ A state may decide to tax property held by corporations at a different rate than property held by individuals. (*Allegheny, supra*, 102 L.Ed.2d at p. 697.) "In each case, '[i]f the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference of policy, there is no denial of

⁸*Allied Stores* involved an equal protection challenge to an Ohio statute which exempted from ad valorem taxation merchandise belonging to a nonresident if held in a storage warehouse for storage only. (*Allied Stores of Ohio, supra*, 358 U.S. at pp. 522-523.) It illustrates the application of the deferential rational basis standard.

The United States Supreme Court noted: "[I]t has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the Equal Protection clause of the Fourteenth Amendment if any state of facts reasonably can be conceived that would sustain it. [Citations.]" (*Allied Stores, supra*, 358 U.S. at p. 528.) The court then rejected the constitutional claim, holding "it is obvious that it may reasonably have been the purpose and policy of the State Legislature, in adopting the proviso, to encourage the construction or leasing and operation of warehouses in Ohio by nonresidents with the attendant benefits to the State's economy, . . ." (*Id.*, at pp. 528-529.)

the equal protection of the law.' [Citation.]" (*Id.*, at pp. 697-698.)

Moreover, the states are not confined to a current value system under equal protection principles, and West Virginia was not precluded from adopting an assessment scheme based on a standard other than market value. (*Allegheny, supra*, 102 L.Ed.2d at p. 698.)

Thus, it cannot be said an acquisition value assessment method contravenes equal protection under the law. Today, as when it was adopted, Proposition 13 can be upheld "on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." (*Allegheny, supra*, 102 L.Ed.2d at p. 698, fn. 4.) That is the beginning and the end of the inquiry. Any further scrutiny would involve the court impermissibly in examining the desirability of Proposition 13. (See *Daniel v. Family Ins. Co.* (1949) 336 U.S. 220, 224 [93 L.Ed. 632].)

6. *Additional arguments based on post-Amador right to travel cases.*

In addition to *Allegheny*, Nordlinger relies on other United States Supreme Court decisions after *Amador* to overturn *Amador's* disposition of the right to travel issue under a heightened scrutiny standard.⁹

⁹The United States Supreme Court has observed "right to travel analysis refers to little more than a particular application of equal protection analysis. Right to travel cases have examined, in equal protection terms, state distinctions between newcomers and longer term residents. [Citations.]" (*Zobel v. Williams, supra*, 457 U.S. at pp. 60-61, fn. 6 [72 L.Ed.2d 672, 677-678].) However, "regardless of the label we place on our analysis—right to migrate or equal protection—once we find a burden on the right to migrate the standard of review is the same. Laws which burden that right must be necessary to further a compelling state interest. [Citation.]" (*Attorney General of N. Y. v. Soto-Lopez* (1986) 476 U.S. 898, 904-905, fn. 4 [90 L.Ed.2d 899, 906-907].)

In *Zobel v. Williams* (1982) 457 U.S. 55, 56, the high court invalidated an Alaska statute which distributed income from state natural resources to Alaska citizens based on the length of each citizen's residence. *Zobel* held Alaska's unequal distribution of benefits failed even minimal rational basis scrutiny under the equal protection clause because Alaska's objective of rewarding citizens for past contributions was not a legitimate state purpose. (*Id.*, at pp. 60-63.)

In *Hooper v. Bernalillo County Assessor* (1985) 472 U.S. 612, 614, 623 [86 L.Ed.2d 487], the court struck down on equal protection grounds a New Mexico statute granting a property tax exemption to those Vietnam veterans who resided in the state before a specified date. *Hooper* observed: "Stripped of its asserted justification, the New Mexico statute suffers from the same constitutional flaw as the Alaska statute in *Zobel*. [Fn. omitted.] The New Mexico statute, by singling out previous residents for the tax exemption, rewards only those citizens for their 'past contributions' toward our Nation's military effort in Vietnam. . . . The State may not favor established residents over new residents based on the view that the State may take care of 'its own,' if such is defined by prior residence. . . . [¶] [T]he Constitution will not tolerate a state benefit program that 'creates fixed, permanent distinctions . . . between . . . classes of concededly bona fide residents, based on how long they have been in the State.' [Citation.] [Fn. omitted.]" (*Id.*, 472 U.S. at pp. 622-623, 105 S.Ct. at 2869.)

Similarly in *Attorney General of N. Y. v. Soto-Lopez, supra*, 476 U.S. 898, 106 S.Ct. 2317, the court held a New York preference in civil service employment favoring veterans who were residents when they entered military service violated the rights to travel and to equal protection of resident veterans who resided outside New York when they entered military service. (*Id.*, at pp. 899, 911, 106 S.Ct. at 2318, 2325.) New York failed to demonstrate a compelling state interest for its classification because each of its asserted purposes could be achieved without penalizing veterans who did not meet

the prior residence requirement. (*Id.*, at pp. 909-911, 106 S.Ct. at 2324-2325.)

The above cited cases constitute good law but Nordlinger's reliance thereon is misplaced. Her argument overlooks the crucial fact that article XIII A's acquisition value assessment scheme applies equally to *nonresident* owners. Unlike the New Mexico residency-based tax exemption which was invalidated in *Hooper*, article XIII A bases each property owner's assessment on acquisition value, irrespective of the owner's status as a California resident or the owner's length of residence in the state. While the acquisition value assessment method relatively benefits longtime residents, that result merely is incidental to an acquisition value approach. In sum, the right to migrate is not burdened here.

Therefore, we are unpersuaded by the contention that since *Amador*, a heightened scrutiny standard has replaced the rational basis test utilized in *Amador*. The rational basis test employed by *Amador* remains the appropriate level of scrutiny herein.

7. Article XIII A amendments do not invalidate it.

Lastly, the rational basis of the acquisition value system is not invalidated by the fact that in the years since *Amador*, article XIII A, section 2, has been amended to provide base-year values may be transferred to certain replacement properties, and that certain transfers of property are deemed not to be a change of ownership.¹⁰ In the field of taxation, the states enjoy wide "latitude . . . in the classification of property . . . and the granting of partial or total exemptions upon grounds of policy." (*Royster Guano Co. v. Virginia* (1920) 253 U.S. 412, 415, 40 S.Ct. 560, 562, 64 L.Ed. 989, 991; see *U.S. Railroad Retirement Bd. v. Fritz* (1980) 449

¹⁰For example, the transfer of a principal residence from parents to children does not trigger a reassessment. (Art. XIII A, § 2, subd. (h).)

U.S. 166, 174-176, 101 S.Ct. 453, 459-460, 66 L.Ed.2d 368.) While we do not have the occasion here to address the propriety of those various exceptions, the existence thereof does not deprive article XIII A, section 2, of its essential rational basis, namely, to protect owners of real property from being assessed on their unrealized gains. (*Amador*, *supra*, 22 Cal.3d at p. 235, 149 Cal.Rptr. 239, 583 P.2d 1281.)

CONCLUSION

The expected disparities of article XIII A, which severed assessed value from current market value, have manifested themselves in the years since the *Amador* decision. Nonetheless, as *Amador* determined, the article passes muster under the rational basis standard because it protects taxpayers from being assessed on the appreciated but unrealized value of their real property.

Allegheny is inapposite because it involves the intentional undervaluation of comparable property under a current market value assessment method. Because *Allegheny* held West Virginia was free to adopt an assessment approach based on a standard other than current market value, California is not precluded from basing real property assessments on acquisition value.

Article XIII A does not burden the right to migrate because the acquisition value system is equally applicable to nonresidents and does not classify California residents according to the time they established residence. While longtime residents derive relatively greater benefits from the acquisition value system, that result merely is incidental to an acquisition value approach.

Because Nordlinger is not capable of amending her pleading to state a cause for action for declaratory relief or for refund of taxes paid, the trial court properly sustained the demurrer to both causes of action without leave to amend.

Proposition 13 was a product of the tax revolt movement that swept California in the late 1970's. Because article XIII

A is not constitutionally infirm, homeowners such as Nordlinger who seek a fairer tax assessment scheme must look again to the political process, not to the courts.¹¹

DISPOSITION

The order of dismissal is affirmed. Each party to bear respective costs on appeal.

CERTIFIED FOR PUBLICATION

KLEIN, P.J.

We concur:

DANIELSON, J.

CROSKEY, J.

¹¹It is questionable, however, whether a majority of the electorate ever will be sufficiently aggrieved to repeal article XIII A's acquisition value assessment method. Although most current homeowners acquired their properties after 1975, they too are relatively benefitted by the acquisition value approach because their assessments do not reflect the subsequent appreciation in the value of their properties. Further, as property prices continue to climb due to inflation, a new purchaser's acquisition value soon is exceeded by the property's current value, thus giving the new owner a stake in the acquisition value system.

B1

SUPREME COURT
FILED

FEB 28 1991

Robert Wandruff Clerk
DEPUTY

Second Appellate District, Division Three, No. B048719
S019164

IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

IN BANK

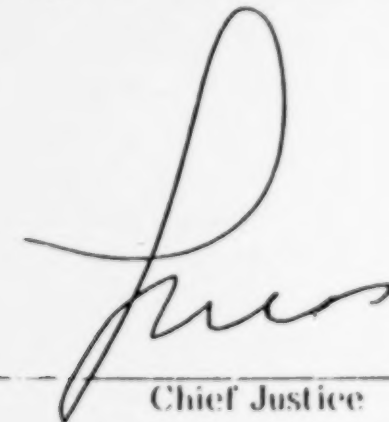
STEPHANIE NORDLINGER, Appellant

v.

JOHN J. LYNCH Et Al., Respondents

Petition for review DENIED.

Kennard, J. is of the opinion the petition should be
granted.



Chief Justice

APPENDIX B

**ARTICLE 13A, CALIFORNIA CONSTITUTION
(Proposition 13)**

**§ 1. Ad valorem tax on real property; maximum amount;
application**

Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law to the districts within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on (1) any indebtedness approved by the voters prior to July 1, 1978, or (2) any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition.

(Added June 6, 1978. Amended June 3, 1986.)

**§ 2. Full cash value; reassessment; newly constructed
property; seismic safety; value and location of replace-
ment dwelling; full cash value base; change in ownership;
family transfers**

Sec. 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, "newly constructed" does not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of the real property, as reconstructed, is comparable to its fair market value prior to the disaster. Also, the term "newly constructed" shall not include the portion of reconstruction or improvement to a structure, constructed of unreinforced masonry bearing wall construction, necessary to comply with

any local ordinance relating to seismic safety during the first 15 years following that reconstruction or improvement.

However, the Legislature may provide that under appropriate circumstances and pursuant to definitions and procedures established by the Legislature, any person over the age of 55 years who resides in property which is eligible for the homeowner's exemption under subdivision (k) of Section 3 of Article XIII and any implementing legislation may transfer the base year value of the property entitled to exemption, with the adjustments authorized by subdivision (b), to any replacement dwelling of equal or lesser value located within the same county and purchased or newly constructed by that person as his or her principal residence within two years of the sale of the original property. For purposes of this section, "any person over the age of 55 years" includes a married couple one member of which is over the age of 55 years. For purposes of this section, "replacement dwelling" means a building, structure, or other shelter constituting a place of abode, whether real property or personal property, and any land on which it may be situated. For purposes of this section, a two-dwelling unit shall be considered as two separate single-family dwellings. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after November 5, 1986.

In addition, the Legislature may authorize each county board of supervisors, after consultation with the local affected agencies within the county's boundaries, to adopt an ordinance making the provisions of this subdivision relating to transfer of base year value also applicable to situations in which the replacement dwellings are located in that county and the original properties are located in another county within this state. For purposes of this paragraph, "local affected agency" means any city, special district, school district, or community college district which receives an annual property tax revenue allocation. This paragraph shall apply to any replacement dwelling which was purchased or newly constructed on or after the date the county adopted

the provisions of this subdivision relating to transfer of base year value, but shall not apply to any replacement dwelling which was purchased or newly constructed before November 9, 1988.

The Legislature may extend the provisions of this subdivision relating to the transfer of base year values from original properties to replacement dwellings of homeowners over the age of 55 years to severely disabled homeowners, but only with respect to those replacement dwellings purchased or newly constructed on or after the effective date of this paragraph.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

(c) For purposes of subdivision (a), the Legislature may provide that the term "newly constructed" shall not include *** any of the following:

(1) The construction or addition of any active solar energy system.

(2) The construction or installation of any fire sprinkler system, other fire extinguishing system, fire detection system, or fire-related egress improvement, as defined by the Legislature, which is constructed or installed after the effective date of this paragraph.

(3) The construction, installation, or modification on or after the effective date of this paragraph of any portion or structural component of a single or multiple family dwelling which is eligible for the homeowner's exemption if the construction, installation, or modification is for the purpose of making the dwelling more accessible to severely disabled person.

(d) For purposes of this section, the term "change in ownership" shall not include the acquisition of real property

as a replacement for comparable property if the person acquiring the real property has been displaced from the property replaced by eminent domain proceedings, by acquisition by a public entity, or governmental action which has resulted in a judgment of inverse condemnation. The real property acquired shall be deemed comparable to the property replaced if it is similar in size, utility, and function, or if it conforms to state regulations defined by the Legislature governing the relocation of persons displaced by governmental actions. The provisions of this subdivision shall be applied to any property acquired after March 1, 1975, but shall affect only those assessments of that property which occur after the provisions of this subdivision take effect.

(e) Notwithstanding any other provision of this section, the Legislature shall provide that the base-year value of property which is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property, within the same county, that is acquired or newly constructed as a replacement for the substantially damaged or destroyed property.

This subdivision shall apply to any comparable replacement property acquired or newly constructed on or after July 1, 1985, and to the determination of base-year values for the 1985-86 fiscal year and fiscal years thereafter.

(f) For the purposes of subdivision (e):

(1) Property is substantially damaged or destroyed if it sustains physical damage amounting to more than 50 percent of its value immediately before the disaster. Damage includes a diminution in the value of property as a result of restricted access caused by the disaster.

(2) Replacement property is comparable to the property substantially damaged or destroyed if it is similar in size, utility, and function to the property which it replaces, and if the fair market value of the acquired property is comparable to the fair market value of the replaced property prior to the disaster.

(g) For purposes of subdivision (a), the terms "purchased" and "change in ownership" shall not include the purchase or transfer of real property between spouses since March 1, 1975, including, but not limited to, all of the following:

(1) Transfers to a trustee for the beneficial use of a spouse, or the surviving spouse of a deceased transferor, or by a trustee of such a trust to the spouse of the trustor.

(2) Transfers to a spouse which take effect upon the death of a spouse.

(3) Transfers to a spouse or former spouse in connection with a property settlement agreement or decree of dissolution of a marriage or legal separation.

(4) The creation, transfer, or termination, solely between spouses, of any coowner's interest.

(5) The distribution of a legal entity's property to a spouse or former spouse in exchange for the interest of the spouse in the legal entity in connection with a property settlement agreement or a decree of dissolution of a marriage or legal separation.

(h) For purposes of subdivision (a), the terms "purchased" and "change of ownership" shall not include the purchase or transfer of the principal residence of the transferor in the case of a purchase or transfer between parents and their children, as defined by the Legislature, and the purchase or transfer of the first \$1,000,000 of the full cash value of all other real property between parties and their children, as defined by the Legislature. This subdivision shall apply to both voluntary transfers and transfers resulting from a court order or judicial decree.

(i) Unless specifically provided otherwise, amendments to this section adopted prior to November 1, 1988, shall be effective for changes in ownership which occur, and new construction which is completed, after the effective date of the amendment. Unless specifically provided otherwise, amendments to this section adopted after November 1, 1988, shall be effective for changes in ownership which occur, and

new construction which is completed, on or after the effective date of the amendment.

(Added June 7, 1978. Amended Nov. 7, 1978; Nov. 4, 1980; June 8, 1982; June 5, 1984; Nov. 6, 1984; June 3, 1986; Initiative Measure, Nov. 4, 1986; Nov. 4, 1986; Nov. 8, 1988; S.C.A. 37 (Prop. 110), approved June 5, 1990.)

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES**

DEPT. 36

Date : 01 / 29 / 90

HONORABLE :

DAVID A. WORKMAN JUDGE

S. RAINWATER

DEPUTY
CLERK _____

HONORABLE JUDGE PRO TEM

10

NONE Reporter
(Parties and counsel
checked if present)

NONE

Deputy Sheriff

9:00
am

C738781

STEPHANIE
NORDLINGERCounsel for HALL & PHILLIPS
Plaintiff By: C. HALL (x)

vs.

JOHN J. LYNCH,
etc., et alCounsel for COUNTY COUNSEL
Defendant OF COUNTY OF
LOS ANGELES by:
A. RAMSEYER (x)

NATURE OF PROCEEDINGS.

DEMURRER OF DEFENDANT JOHN J. LYNCH TO
THE FIRST AMENDED COMPLAINT

By stipulation of the parties, the demurrer is deemed to have been brought by both named defendants, John J. Lynch, in his capacity as Tax Assessor for Los Angeles County, and Los Angeles County.

The Court considers the opposition papers on their merits notwithstanding their defective proofs of service.

Responding party's request for judicial notice is denied for the reason that responding party has provided no copy of the material that is the subject of her request.

DEPT. 36

Page 1

MINUTES ENTERED 01 / 29 / 90 COUNTY CLERK

APPENDIX D

The demurrer is sustained on the grounds stated therein, without leave to amend. Revenue and Tax Code 4808; Amador Valley Joint Union High School District v State Board of Equalization (1978) 22 Cal. 3d 208, 234-237.

For future reference, the Court reminds both sides of the provisions of CRC Rule 201(b).

On oral motion of the demurring parties, the First Amended Complaint is ordered dismissed. CCP 581(f)(1)

All future appearance dates in this department are ordered advanced and vacated.

Notice is waived; demurring parties to prepare and submit proposed order of dismissal.

THE DOCUMENT TO WHICH THIS CERTIFICATE IS
ATTACHED IS A FULL, TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE AND OF RECORD IN
MY OFFICE
ATTEST FEB 05 1990

FRANK S. ZOLIN

County Clerk, Executive Officer of the
Superior Court of California, County of

Los Angeles

BY 

DEPUTY

TABLE 1

RESIDENTIAL PROPERTY TAX DISPARITIES THROUGHOUT LOS ANGELES COUNTY

CURRENT ASSESSMENTS OF COMPARABLE PRO- PERTIES 1989 PURCHASERS: PRE-1975 PURCHASERS¹

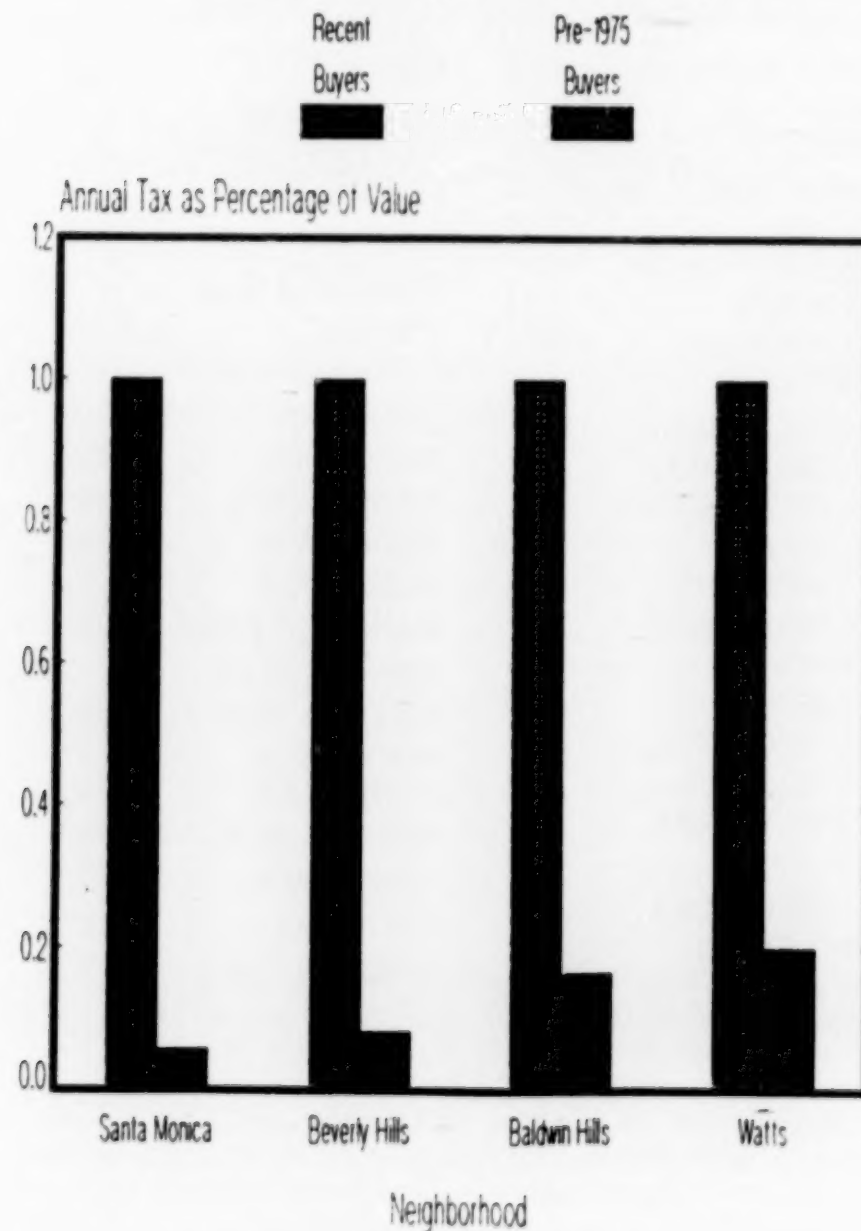
NEIGHBOR- HOOD	ASSESS- MENTS	NEIGHBOR- HOOD	ASSESS- MENTS
SANTA MONICA (Ocean Park)	17:1	PALMS	10:1
VENICE (Walk Streets)	13:1	SILVERLAKE	10:1
BEL AIR	13:1	SANTA CLARITA	10:1
SHERMAN OAKS	12:1	LOS ANGELES (Mid-City)	10:1
CERRITOS	12:1	GRANADA	
ARCADIA	12:1	HILLS	10:1
WESTWOOD	12:1	BOYLE HEIGHTS	10:1
PACIFIC PALISADES	12:1	POMONA	10:1
BEVERLY HILLS	12:1	SUNLAND	10:1
W. LOS ANGELES (Rancho Park)	12:1	EAGLE ROCK	10:1
BRENTWOOD	11:1	MONROVIA	9:1
HOLMBY HILLS	11:1	GLEN DORA	9:1
GLENDALE	11:1	HANCOCK PARK	9:1
EL MONTE	11:1	LOS ANGELES (Coliseum Area)	9:1
SOUTH GATE	11:1	MAR VISTA	9:1
SAN GABRIEL	11:1	HYDE PARK	9:1
GRIFFITH PARK	11:1	PARK LA BREA	9:1
PASADENA	11:1	ALHAMBRA	9:1
PALOS VERDES	10:1	WEST HILLS	9:1
LONG BEACH	10:1	LINCOLN PARK	9:1
ENCINO	10:1		
SAN PEDRO	10:1		

¹ These ratios were determined based on a computer analysis of every property sold in Los Angeles County in the month of August, 1989. For every sale, economist David Gold calculated the disparity between the new owner's assessment and the prior owner's assessment for the very same property, by comparing the sales price (the new owner's assessment) to the assessment immediately before the sale (the prior owner's assessment).

Source: I J. A. 109.

FIGURE 1

PROPORTION OF PROPERTY VALUE PAID IN TAX
Recent Buyers Compared to Pre-1975 Buyers



(Based on Tables 1 & 2)

TABLE 2

DIFFERENCE IN PROPERTY TAXES BETWEEN
COMPARABLE HOMES IN SELECTED
NEIGHBORHOODS

NEIGHBORHOOD ¹	CURRENT MARKET VALUE OF HOME	TAX ON NEW OWNER	TAX ON PRE-1975 OWNER ²	RATIO OF TAX ON NEW OWNER TO TAX ON PRE-1975 OWNER
BEVERLY HILLS	\$3,800,000	\$38,000	\$3,230	12:1
MANHATTAN BEACH	630,000	6,300	680	9:1
BALDWIN HILLS (Petitioner's Area)	210,000	2,100	360	6:1
COMPTON	90,000	900	180	5:1
WATTS	80,000	800	160	5:1

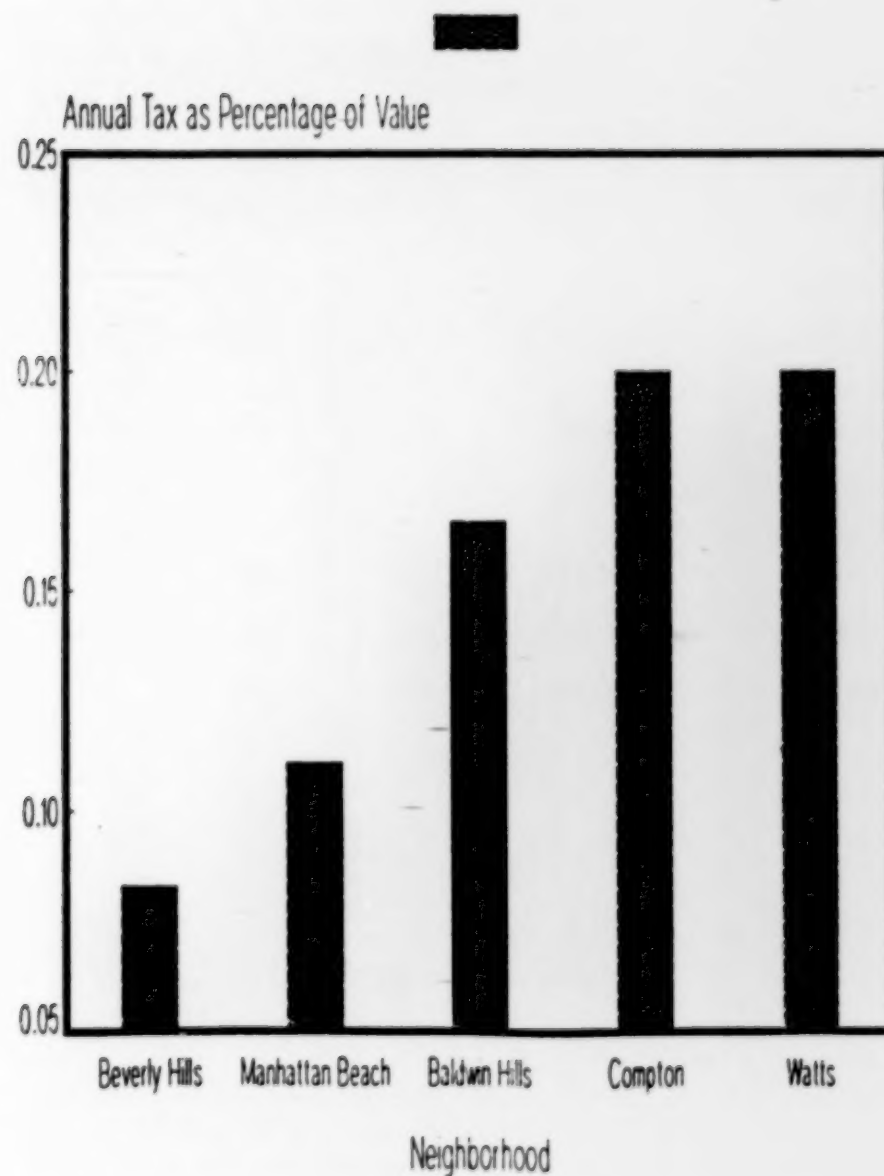
¹Each neighborhood entry corresponds to an actual pair of homes displaying tax disparities between recent and long-time owners that are typical in their neighborhood for this class of home. In each instance, the home owned by a pre-1975 buyer was judged by a professional appraiser to be comparable with or superior to the corresponding recently purchased home. See II J.A. 306; I J.A. 127.

²The taxes are calculated at the 1% rate; because rates to pay for voter approved indebtedness vary around the county, actual taxes may be slightly above 1%.

Source: I J.A. 127.

FIGURE 2

PROPORTION OF PROPERTY VALUE PAID IN TAX
Pre-1975 Buyers



(Based on Table 2)

TABLE 3

RATE AT WHICH TAX DIFFERENTIALS HAVE GROWN
SINCE THE ARTICLE XIII A BASELINE YEAR, AND
PROJECTED DIFFERENTIALS IN 10 MORE YEARS
IN SELECTED NEIGHBORHOODS

	Annual ¹ Growth Rate of Home Values	Annual ² Growth Rate of Tax Differ- entials	Current Tax Differ- entials	Years Taken For Tax Differ- entials to Double	Projected Tax Differ- entials 10 Years From Now
VENICE	22.5%	20.1%	13:1	3.8	81:1
BEVERLY HILLS	21.1%	19.4%	12:1	3.9	71:1
MAR VISTA	18.3%	16.0%	8:1	4.7	35:1
BALDWIN HILLS (Petitioner's Area)	16.0%	13.7%	6:1	5.4	22:1
WATTS	14.4%	12.2%	5:1	6.0	16:1

¹This column is based on the average rate at which home values have grown in each neighborhood since 1975.

²The growth rate of the tax differentials differs from the growth rate of the values of the properties because of the 2% annual adjustment allowed under Article XIII A. See I J.A. 130, 131.

Source: I J.A. 130, 131.

TABLE 4

**DISPARITIES IN TAXES PAID BY LONG-TIME
AND RECENT OWNERS OF COMPARABLE
VACANT LOTS IN LOS ANGELES COUNTY¹**

LOCATION	ANNUAL TAX ON LONG- TIME OWNER ²	ANNUAL TAX ON NEW OWNER	PROPERTY TAX ASSESSMENTS BASED ON 1989 PURCHASE PRICE: PROPERTY TAX ASSESSMENTS BASED ON 1975-76 VALUES
PACIFIC PALISADES	\$ 6.00	\$3,500.00	583:1
PACIFIC PALISADES	10.00	2,600.00	252:1
BEVERLY GLEN CANYON/LA	4.60	500.00	108:1
LAUREL CANYON/LA	38.00	3,500.00	93:1
MALIBU	59.00	5,000.00	85:1
BEL AIR	66.00	3,450.00	53:1
LAUREL CANYON/LA	15.00	750.00	48:1
BEVERLY HILLS	51.00	2,400.00	47:1
BEVERLY HILLS	88.00	3,600.00	41:1
LAUREL CANYON/LA	46.00	1,300.00	28:1
LAUREL CANYON/LA	112.00	3,000.00	27:1

¹ Dollar figures have been rounded.

² Many vacant lots in Los Angeles County are presently taxed as little as \$6.00 because in 1975, the year of their base year value, they were considered undevelopable. Today, by contrast, due to technological or legal changes, the lots are worth hundreds of thousands of dollars, an increase in valuation not subject to property taxation until the property changes ownership. See III J.A. 595.

Source: I J.A. 111, 112.

TABLE 5

**DISPARITIES IN TAXES PAID BY LONG-TIME AND
RECENT OWNERS OF COMPARABLE COMMERCIAL,
INDUSTRIAL AND INCOME-PRODUCING PROPERTY
IN LOS ANGELES COUNTY**

APARTMENTS		OFFICE BUILDINGS	
NEIGHBORHOOD	RATIO ¹	NEIGHBORHOOD	RATIO
BRENTWOOD	10:1	MONROVIA	8:1
WEST HOLLYWOOD	9:1	SAN PEDRO	8:1
HUNTINGTON PARK	9:1	L.A. MID-CITY	7:1
ARCADIA	9:1	AREA	
SOUTH GATE	9:1	COMMERCE	7:1
		COMPTON	7:1
LIGHT INDUSTRIAL		GARAGES	
NEIGHBORHOOD	RATIO	NEIGHBORHOOD	RATIO
FLORENCE	11:1	COMPTON	10:1
PALMDALE	10:1	SOUTH LOS ANGELES	8:1
WATTS	9:1	UNIVERSAL CITY	6:1
EL MONTE	8:1	GLENDALE	6:1
VAN NUYS	7:1	DOWNTOWN	6:1
		LOS ANGELES	
STORE BUILDINGS		RESTAURANTS	
NEIGHBORHOOD	RATIO	NEIGHBORHOOD	RATIO
CULVER CITY	11:1	UNIVERSAL CITY	9:1
DOWNTOWN LA	10:1	INGLEWOOD	8:1
SOUTH GATE	9:1	TEMPLE CITY	6:1
GLENDALE	8:1	STUDIO CITY	6:1
LONG BEACH	7:1	WHITTIER	6:1

¹ The ratio is equal to property tax assessments on property purchased in 1989 compared to tax assessments on comparable properties purchased in 1975.
Source: I J.A. 113, 114.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on June 14, 1991, I served the within *Petition for Writ of Certiorari* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(By Express Mail: original
and forty copies)

De Witt W. Clinton
David C. Muir
Albert Ramseyer
648 Hall of Administration
500 West Temple Street
Los Angeles, CA 90012
(Counsel for Respondents)

California Attorney General
Daniel Lungren
3580 Wilshire Boulevard
9th Floor
Los Angeles, CA 90010

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 14, 1991, at Los Angeles, California.

Betty J. Malloy
(Original signed)

Supreme Court, U.S.
FILED

JUL 15 1991

OFFICE OF THE CLERK

(4)
No. 90-1912

In the Supreme Court of the United States

October Term, 1990

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as
Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Respondents object to Petitioner's statement of the QUESTIONS PRESENTED and submit the following questions which correctly state the issues in this matter.

1. May a State establish a property tax classification system distinguishing between parcels based on the value at the time of acquisition, where such distinction is founded on the legislative policy of providing all owners, in a non-discriminatory manner, with certain, predictable and limited property taxes during the future period of their ownership.

2. Does Petitioner have standing to argue infringement of the constitutionally protected "right to travel" where the record does not support any fact other than that Petitioner resides in the property which is the subject of the petition.

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No. 90-1912

**In the Supreme Court of the
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October Term, 1990

STEPHANIE NORDLINGER,

Petitioner,

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Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,

Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

I.

STATEMENT OF THE CASE

A. BACKGROUND OF THE PROCEEDINGS

In June, 1978, the California electorate approved Proposition 13 by a nearly two-thirds vote, thereby adding Article XIII A to the California Constitution. Popularly known as "Proposition 13", Article XIII A incorporated an acquisition value system of taxing real property.

On September 18, 1989, Petitioner filed this action against the County of Los Angeles and the County

Assessor contending that Proposition 13 failed to meet Equal Protection requirements. The trial court sustained defendants' demurrer without leave to amend. Petitioner appealed to the California Court of Appeal, Second Appellate District, which upheld the trial court decision. Petitioner sought review by the California Supreme Court which denied discretionary review.

B. PETITIONER'S FACTS DISPUTED BY RESPONDENTS

Respondents dispute Petitioner's STATEMENT OF FACTS in her Petition For Writ Of Certiorari. Under "A. Proposition 13's Operation", Petitioner greatly mischaracterizes Proposition 13's actual operation. Article XIII A's Change of Ownership provisions are unique and do not fit within the factual mold of those cases wherein discrimination within a single class has been characterized as the "welcome stranger" doctrine.

Respondents do not dispute the fact that from time to time properties of like current fair market value will be assessed at different values, but Respondents dispute Petitioner's statement that, "new property owners pay property taxes *commonly* 10, 12, 15, 17 and as much as 583 times more than long-time owners." (Emphasis added.) The amount and degree of disparity "common" in California is not a matter of record in this case, and is, in fact, unknown. While Petitioner made an offering in the trial court below of a study which she alleged demonstrated disparities, that study, which is not in evidence in this matter, cannot be considered to prove generally any specific amount of disparity in California. Petitioner's study allegedly analyzed roughly 10,000 recent sales selected by Petitioner's economist. Assuming it was, in fact, objective, it would only have looked at eight tenths of one percent of the 1,200,000 real property

parcels in Los Angeles County. Further, 10,000 parcels is an infinitesimal percentage of the millions of parcels of real property in California. Absent massive statistical research, which, to Respondents' knowledge has not been done by anyone in the United States, the amount and degree of disparities offered by Petitioner as fact are essentially nothing more than conjecture.

With regard to Petitioner's "C. Property Tax Assessment Disparities Resulting From Proposition 13's Operation.", Respondents, for the same reason as stated above (Petitioner's assuming facts not in evidence), object to the numerous factual conclusions and generalizations drawn by Petitioner. Respondents submit that, based on the record, it is improper for Petitioner to, (1) characterize disparities throughout California as having become "especially extreme" or "extremely common"; or (2) characterize new buyers as purchasing because of "marriage, divorce or a change in family size, not because they desire more luxurious accommodations;"¹ or (3) claim that pre-1978 homeowners paid 61% more on their first tax bill than they do today;" or (4) assert that "these dramatic inequities will soon grow even worse . . . residential disparities greater than 26:1 will be commonplace within ten years;" or (5) assert that, " . . . within ten years many new home buyers will be paying 70 to 80 times the taxes of their stay-put neighbors; or (6) assert that, " . . . the greatest beneficiaries of this system are the wealthy."

¹While Petitioner cites the California Court of Appeals decision below for this assertion, the decision below is nothing more than a recitation by the court below of Petitioner's proposed second amended complaint.

Petitioner has, in her statement of facts, piled a "mountain" of self serving factual generalizations and legal conclusions on a "mole hill" sized statistical study which itself is not in evidence.

C. LEGISLATIVE BACKGROUND

Prior to the adoption of Proposition 13 in 1978, property values in California were escalating rapidly. The pre-Article XIII A system of property taxation permitted local governmental units to set a property tax rate without limits. The property tax rate for each local governmental unit was applied to a parcel's current market value. On a microeconomic basis, for an individual parcel of real property, the tax rate for that individual parcel was the sum of the rates established by each local governmental unit overlapping the parcel.

Under this earlier system, the rapid escalation of property values in California, a lack of legal restraints on the power to set tax rates, and the failure of local governmental units to reduce rates in the face of rising property values resulted in many property owners literally being "taxed off their land." This gave rise to California's "taxpayers' revolt", which culminated in the adoption of Proposition 13.

Choosing a microeconomic rather than a macroeconomic approach to tax restrictions, Proposition 13 implemented a balancing of several important goals, which were set forth in the published ballot arguments and official literature surrounding its enactment. Proposition 13 limited real property taxation in California by:

(1) restricting the basic tax rate that can be applied to taxable property to 1% of assessed value;

(2) restricting the assessed value of each parcel to its market value on the date property is acquired or changes ownership and thereafter limiting future inflationary increases to 2% per year until a subsequent change in ownership (thereby preventing the taxation of unrealized paper gains between changes of ownership), and

(3) providing government with a stable but limited level of property tax revenue with increases sufficient to keep pace with inflation through permitted reassessments upon changes in ownership together with the 2% inflation adjustment for parcels not changing ownership.²

Proposition 13 converted California's property tax scheme from a "current market value" system to an "acquisition value" system. (*Amador Valley Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208.)

D. MACY'S CHALLENGE TO PROPOSITION 13

On June 3, 1991, this Court granted a petition for writ of certiorari in *R. H. Macy & Co. v. Contra Costa*

²Cal. Const., Art. XIII A, Sec. 1(a): "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property"

Cal. Const., Art. XIII A, Sec. 2(a): "The full cash value means the County Assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change of ownership has occurred after the 1975 assessment"

Cal. Const., Art. XIII A, Sec. 2(b): "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent of any given year or reduction as shown in the Consumer Price Index or comparable date for the area under taxing jurisdiction. . . ."

County, No. 90-1603 (the "*Macy's*" case).³ The petition in *Macy's* alleged that the application of the Change of Ownership provision following a management buy-out resulted in a tax rate for its store which was 2-1/2 times the rate for adjacent, competing stores. (Pet., pg. 3.) *Macy's* argued that "[t]he Change of Ownership provision is a simple case of favoring longstanding property owners in the State over newcomers and new competitors. Such favoritism is wholly irrational *as applied to commercial property* and is emphatically not a legitimate basis for discrimination under the Equal Protection Clause. [Citations.]" (*Macy's* Pet., pg. 8, first emphasis added, second in original.) *Macy's* challenged the Change of Ownership provision as being violative of the equal protection and commerce clauses of the Constitution.

The petition in *Macy's* was carefully limited to commercial property. *Macy's* questioned whether the State policy justifying the Change of Ownership provision applies to commercial property, where the cost of a tax increase can be passed on to consumers.

II

SUMMARY OF ARGUMENT

Respondents respectfully submit that the property tax classification system in Article XIII A of the California Constitution presents no new or special constitutional issues or important reasons for granting Petitioner a writ of certiorari. The decisions of the California Court of Appeals and the California Supreme Court concerning Article XIII A do not conflict with any applicable

³The *Macy's* case was dismissed on June 28, 1991, under Rule 46.

decision of this Court, including recent decisions cited by Petitioner.

Allegheny Pittsburgh Coal Co. v. County Commission, (1989) 488 U.S. 336, relied on heavily by Petitioner, is distinguishable and there is no legal similarity between *Allegheny Pittsburgh* and Article XIII A.

Allegheny Pittsburgh involved action by a state official (i.e. the local assessor) in conflict with West Virginia law—action constituting a clear aberrational, intentional and systematic undervaluation of property *within a single class* without statutory or regulatory authority. In *Allegheny Pittsburgh* this Court held that *within a single classification*, equal protection requires a reasonable remedy and that it is a denial of equal protection for a state, as the sole remedy, to force the taxpayer to seek to raise the low assessed values of all other parcels to achieve tax equality mandated under state law. *Allegheny Pittsburgh* was an *equal protection "remedy"* case following a long line of such "remedy" cases and not a "*classification*" case. It did not establish any new basis or alter the criteria for review of tax classifications under this Court's long established standards. Nothing in *Allegheny Pittsburgh* compels the conclusion that Article XIII A's Change of Ownership provision is invalid.

Article XIII A's acquisition value system, including its Change of Ownership provision, is supported by a rational basis reasonably related to its purposes and is based on sound public policy. Article XIII A was added by Proposition 13, an initiative measure approved by just under two thirds of California's voters, who acted in response to rapidly increasing property taxes brought about by a highly inflationary California real estate market.

The rational basis for Proposition 13's system of property taxation is a balancing of two important legislative goals—(1) providing certainty, predictability and property tax limitation for each individual property owner and preventing the taxation of paper gains, and (2) providing a stable source of property tax revenue for local government under which revenue growth is limited but sufficient to keep pace with inflation.

There is no federal constitutional requirement that all property tax classification systems must be based on current market value to satisfy equal protection. On the contrary, constitutional tax classifications based on any number of distinguishing criteria abound. The tax classification distinctions employed by California's voters in Article XIII A, in concept, are no different than literally hundreds of tax classifications embodied in federal and state tax statutes. The ability of the states to classify is well established in law and needs no clarification by this Court in this case.

For the Court to adopt Petitioner's logic and invalidate Article XIII A's Change of Ownership provisions, it will be necessary for the Court to eliminate, for all practical purposes, the right of the states to classify, and, in particular, to distinguish between taxpayers based on any element other than current market value. Petitioner's logic, if approved, would seriously hamper the ability of the states, and indeed even the United States, to implement social policy through taxation.

Further, Proposition 13 does not discriminate on the basis of residency. All purchasers of property are treated the same under Article XIII A's classification system, whether they are long-time or short-time California residents, and regardless of whether they were nonres-

idents before, at, or subsequent to the time of purchasing their property. Neither length of residence, lack of residence, nor race, color, age, sex or any other suspect classification is relevant to the amount of tax assessed under Article XIII A.

Petitioner raises a "right to travel" argument, but does not have standing to do so. The record in this case is devoid of any evidence that Petitioner's "right to travel" has been impaired. Petitioner's complaint alleges only that she resided in her property.

In any event, the "right to travel" is not impaired by California's acquisition value system. On the contrary, the Change of Ownership provision of Article XIII A assures property owners that a highly inflationary real estate market will not cause their taxes to rise to exorbitant levels in the future. Every purchaser is assured that his property taxes will not increase by more than 2% per year as long as he owns his parcel. This may be viewed as a strong incentive for nonresidents to establish residence and purchase property in California.

Petitioner also seeks to elevate the length of time a person *owns* property, regardless of residency, to the constitutional equivalent of residency. No authority stands for such a premise.

II

ARGUMENT

A. THE RECORD BELOW DOES NOT PROVIDE AN ADEQUATE BASIS FOR REVIEWING PROPOSITION 13

The *Macy's* case was decided by the trial court and affirmed by the Court of Appeal with the benefit of a detailed study jointly commissioned by *Macy's* and the County of Contra Costa. That study analyzed the

effects of the Change of Ownership provision on property taxes in the County. (*Macy's Petition for Writ of Certiorari*, page 4.)

The record in the instant petition, on the other hand, presents a far different situation. The trial court dismissed Petitioner's complaint after sustaining a demurrer without leave to amend. The Court of Appeal affirmed.

Although Petitioner filed certain statistical information and data in the trial court, and Respondents attached a study to their brief filed in the Court of Appeal, there was no stipulation as to the accuracy or validity of such data, and no trial on the merits.

Respondents thus submit that the record in this matter does not provide an adequate basis to permit a review of Proposition 13.

B. ALLEGHENY PITTSBURGH DOES NOT REQUIRE THE INVALIDATION OF PROPOSITION 13's CHANGE OF OWNERSHIP PROVISION

Petitioner apparently views this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Commission* (1989) 488 U.S. 336, as an invitation to invalidate Proposition 13. However, in deciding *Allegheny Pittsburgh*, the Court stated at footnote 4:

"We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as 'Propo-

sition 13'. Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred, constructed upon, or in a limited manner for inflation. Cal. Const., Art. XIII A, Sec. 2 (limiting inflation adjustments to 2% per year). The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." (*Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, *supra*, 488 U.S. 344.)

The distinction between *Allegheny Pittsburgh* and Proposition 13 is clear. *Allegheny Pittsburgh* did not involve a legislatively adopted system of classification. Rather, it involved a clear, aberrational, intentional and systematic undervaluation of property without statutory or regulatory authority. It involved action by a State official directly in conflict with West Virginia State law requirements.

Allegheny Pittsburgh was a *remedy* case, not a *classification* case. This Court was not preventing discrimination based on a system of classification. It was following its long-established rule that, within a single classification, equal protection requires a reasonable remedy. The Court held it was a denial of equal protection for West Virginia to require an aggrieved taxpayer, as the sole remedy, to seek to raise the low-assessed value of all other parcels within the same classification.

This Court acted in *Allegheny Pittsburgh* to uphold the law of West Virginia, more or less acting as, "the final arbiter of State law". (*Cumberland Coal Co. v.*

Bd of Revision (1923) 248 U.S. 23.) In the case at bar, Petitioner requests that this Court *invalidate* the law of California.

The petition in *Macy's* noted that, "it was difficult for the [State of West Virginia] to supply a rational basis for a policy that was, in essence, a mistake. Nothing in the holding of *Allegheny Pittsburgh* implies that it would be impossible for another state—California, perhaps—to supply a rational basis for a method with similar inequalities." (*Macy's* pet., pg 15.)

Respondents respectfully submit that nothing in *Allegheny Pittsburgh* compels the conclusion that Proposition 13's Change of Ownership provision is invalid.

C. CALIFORNIA'S ACQUISITION VALUE SYSTEM MEETS EQUAL PROTECTION REQUIREMENTS

1. The Standard of Review in this Case is the Rational Basis Test.

This Court has long held that a State is to be given great leeway in establishing its system of taxation. (*Kahn v. Shevin* (1974) 416 U.S. 351, 355-356.) Absent a suspect category such as race, color, gender, ethnic origin or absent a category involving a fundamental freedom or political right such as voting and other civil rights, the constitutionality of a tax classification turns on whether the scheme of classification is reasonably rationally related to the purposes for its enactment. Along this line, this Court has established that a disparity must be clearly excessive before it will overturn a tax scheme, since disproportionate extractions of tax revenues from certain individuals or properties have almost always been upheld. (*Fox v. Standard Oil Co.* (1935) 294 U.S. 87; *Dane v. Jackson* (1921) 256 U.S. 89.)

Further, this Court has repeatedly admonished against interfering with a State's fiscal policies under the Equal Protection Clause. (*San Antonio Independent School District v. Rodriguez* (1973) 411 U.S. 1, 40.) Quoting from *Madden v. Kentucky* (1940) 309 U.S. 83, 84, this Court held, in *Regan v. Taxation with Representation of Washington* (1983) 461 U.S. 540, 547-48:

"... [I]n taxation, even more than in other fields, legislatures possess the greatest freedom in classification. Since the members of a legislature necessarily enjoy a familiarity with local conditions which this Court cannot have, the presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it."⁴

In the instant case, the distinction at issue is taxing property on the basis of its value when newly acquired rather than its periodically changing market value. Article XIII A classifies properties solely and totally on the basis of value at the time of acquisition.

In this regard all purchasers of property are treated

⁴Proposition 13 was "enacted" through the initiative process by the electorate, who arguably are even more familiar with local conditions. Under the initiative power, set forth in Article II, Sec. 8 of the California Constitution, the people act as a super-legislature, often using the power as a "legislative battering ram" to achieve reform which the State Legislature has failed to accomplish. (*Amador, supra*, 22 Cal.3d at 228.)

the same under Article XIII A's classification system, whether they be long-time or short-time California residents, or whether they are nonresidents before, at or subsequent to the time of purchasing their property. Neither length of residence within California, lack of California residence, nor race, color, age, gender or any other suspect classification is relevant to the Article XIII A tax system or the amount of tax levied and assessed under Article XIII A.

Consequently, there is no basis for applying any other standard than the rational basis test to determine the constitutionality of Article XIII A.

2. California May Establish A Property Tax Classification System Distinguishing Between Parcels Based On Acquisition Value Where That Distinction Is Founded On A Rational Basis.

In essence, Petitioner argues that all taxes on property must be based on a current market value system to meet the requirements of the Equal Protection Clause. No decision by this Court directly or by analysis establishes such a strict requirement.

The power of states to classify for tax purposes is very broad. Constitutional tax classifications abound. This Court and lower federal courts have sanctioned tax classification distinctions based on geography, *Weissinger v. Boswell* (M.D. Ala. 1971) 330 F.Supp. 615; distinctions based on the nature or use to which property is put, such as differences in the operations of common carriers, *Dixie Ohio Express Co. v. State Rev. Comm'n* (1939) 306 U.S. 72; *Hero Mayflower Transit Co. v. Board of J.R.R. Comm'rs* (1948) 332 U.S.

495; *Bekins Van Lines v. Riley* (1929) 280 U.S. 80; differences in what is being transported, *Alward v. Johnson* (1931) 282 U.S. 509; differences in vehicle use and weight, *Coyne v. Prouty* (1933) 289 U.S. 704; differences in what natural resource is being extracted or produced, *Lake Superior Consol. Iron Mines v. Lord* (1926) 271 U.S. 577; differences in whether property is real property, tangible personal property or intangible property, *Klein v. Board of Tax Supervisors* (1930) 282 U.S. 19; differences based on agricultural versus nonagricultural use, *Clark v. Kansas City* (1900) 176 U.S. 114; differences in leased versus owned property, *Illinois Central v. Minnesota* (1940) 309 U.S. 157; differences in bank charters, *Union Bank & Trust Co. v. Phelps* (1933) 288 U.S. 181; *Commercial Nat'l Bank v. Chambers* (1901) 182 U.S. 556; differences in the purposes for storing merchandise within a state, *Allied Stores v. Bowers* (1959) 358 U.S. 522; *Youngstown Sheet & Tube Co. v. Bowers* (1959) 358 U.S. 534.

Also, this Court has found no fault with taxing individuals differently than corporations or partnerships with regard to the same property, *Lehnausen v. Lake Shore Auto Parts Co.* (1973) 410 U.S. 356; *Barrett v. Shapiro* (1973) 411 U.S. 910; *Lawrence v. State Tax Comm'r* (1932) 286 U.S. 276; *White River Lumber v. Arkansas* (1929) 279 U.S. 692; *New York v. Barker* (1900) 179 U.S. 279; and even though the entities being distinguished as to tax burden directly compete with one another, *Puget Sound Power and Light Co v. Seattle* (1934) 291 U.S. 619.

Finally, state (and federal) tax laws constitutionally distinguish among individuals on a myriad of bases involving state income, inheritance, property, sales and other tax laws. Such distinctions have been sustained so many times they are too numerous to cite.

The deference shown by this Court to the states in permitting tax classifications spans many years. As early as 1890, this Court sanctioned tax classification systems based on "nominal or face value," rather than current market value. (*Bell's Gap Railroad Company v. Commonwealth of Pennsylvania* (1890) 134 U.S. 232.) In 1974, more than 80 years later and after many similar decisions in between, this Court stated:

" . . . state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the federal Constitution. This principle has weathered nearly a century of Supreme Court adjudication" (*Kahn v. Shevan*, 416 U.S. 351, 355.) (Citations omitted.)

Petitioner argues that Article XIII A is unconstitutional because it could have attained the articulated goals of "tax limitation . . . promoting certainty and predictability" and avoiding taxes on "paper profits" without the change of ownership provision, but that this would have "bankrupted local government in the long run." (Petition For Writ Of Certiorari, p.23) Continuing her argument, she maintains that avoiding bankruptcy of local governments or providing "ever increasing property tax revenues to local governments" is insufficient justification for California's property tax scheme since such an argument could be used to support any discriminatory tax. Petitioner's argument ignores the true purpose of the overall property tax scheme of Article XIII A.

California's acquisition value system, including the change of ownership provision which is an integral part

thereof, carries out important economic policy of California.

The California Supreme Court, in *Amador Valley Joint Union High School Dist. v. State Board of Equalization* (1978) 22 Cal.3d 208 at 231, described Proposition 13 as a measure consisting of four major elements: "a real property *tax rate* limitation (§1), a real property *assessment* limitation (§2), a restriction on *state* taxes (§3), and a restriction on *local* taxes (§4)." (Emphasis in original.) The *Amador* court noted: "Although petitioners insist that these features constitute separate *subjects*, we find that each of them is reasonably interrelated and interdependent, forming an interlocking 'package' deemed necessary by the initiative's framers to assure effective real property tax relief." (*Id.*, emphasis in original.)

In rejecting an equal protection challenge, the Court opined:

"This 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. For example, a taxpayer who acquired his property for \$40,000 in 1974 henceforth will be assessed and taxed on the basis of that cost (assuming it represented the

then fair market value). This result is fair and equitable in that his future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. On the other hand, a person who paid \$80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property. Seen in this light, and contrary to petitioners' assumption, section 2 does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purchase. This is an arguably reasonable basis for assessment. (We leave open for future resolution questions regarding the proper application of Art. XIII A to involuntary changes in ownership or new construction.)" (*Id.*, 22 Cal.3d at 235.)

The Petitioners in *Macy's* explained the tax policy carried out by Proposition 13:

"Our natural reluctance to tax individuals on values embodied in 'unrealized paper gains' is based on the fact that those gains do not translate into money with which to pay the tax, unless the owner sells or mortgages his property. As petitioners have argued throughout this litigation, however, while that argu-

ment might be sufficient to justify the Change in Ownership provision as applied to residential homeowners, it has no rational application to owners of commercial property. Homeowner property is non-income-producing. The owner's income is unrelated to changes in the value of his property. When the value of his home goes up, there is no guarantee that his income will rise with it. In the case of retired persons or others on fixed incomes the problem is particularly severe." (*Macy's Pet.*, pgs 18-19, fn. deleted.)

Proposition 13's acquisition value system, including its Change of Ownership provision, is supported by a rational basis and carries out important and legitimate tax policy. It comports with the requirements of the Equal Protection Clause.

D. PROPOSITION 13 DOES NOT INFRINGE ON THE "RIGHT TO TRAVEL" OR DISCRIMINATE ON THE BASIS OF RESIDENCY

1. Constitutional Residency Requirements Simply Prevent States From Discriminating In Favor Of Their Own Residents.

Justice Brennan has clarified succinctly when residency will create equal protection problems:

"[T]he answer lies in remembering that our Constitution is an instrument of federalism . . . the Equal Protection Clause, among its other roles, operates to maintain this principal of federalism A state cannot be allowed to discriminate in favor of its own residents and

against residents of other states Where a state discriminates against its own, it does no disruption to . . . federalism." *Allied Stores v. Bowers*, 358 U.S. 522, 532 (1959).

Petitioner's Argument neglects the fact that, unlike all the cases she cites, Article XIII A does not directly or indirectly discriminate or distinguish between citizens based on residence. California's acquisition value system differentiates between property purchasers on the basis of the value of their property when acquired. It does so whether the purchasers are long-time residents, new residents, or non-residents.

It need not be determined whether California's system of classification must be justified by a compelling State interest (*Attorney General of N. Y. v. Soto-Lopez*, (1986) 476 U.S. 898, 903), because California's classification is not based on residency, length of residency or the date of residency in California.

2. Petitioner Does Not Have Standing To Argue That Her "Right To Travel" Is Impaired By Article XIII A.

Petitioner's record below does not satisfy her burden of demonstrating actual discrimination against her sufficient to constitute a denial of equal protection. The record does not support any fact other than that Petitioner resides in the property which is the subject of the petition. The record contains no factual evidence indicating in any manner that Petitioner's own specific "right to travel" was impaired. Consequently, Petitioner does not have standing to argue infringement of the "right to travel." *Valley Forge College v. Americans United*, (1982) 454 U.S. 464.)

3. The Record Establishes No Facts Supporting Any Issue On The "Right To Travel."

Petitioner's argument that Article XIII A creates continuing disparities between properties over time cannot be sustained. The record does not establish, as a matter of fact, that in the future properties will continue to increase in value after their acquisition. The record does not establish, as a matter of fact, any growing disparity in values among properties. In fact, recent reversals in the formerly highflying California real estate market tend to negate any assumptions at all about future California property values.

Even under Petitioner's assumption that properties will always increase in value, as parcels change ownership over time, two parcels, X and Y, may be reassessed many times, first with X paying a higher tax, then with Y paying a higher tax, then with X again paying a higher tax, and so on. Over time, the assessed value of each parcel in California is likely to "leap frog" over other parcels of similar value. Nevertheless, each parcel owner will pay tax on an amount that is 100% predictable so long as he owns his parcel (i.e., 1% of the amount paid for the parcel, plus an inflation factor of 2% per year).

While no one can presume that any given parcel will ever change ownership, it is safe to presume that, in the aggregate, all parcels will eventually change ownership and that in the long run over a reasonable period of time equality of taxation for all parcels will be roughly maintained.

In fact, in other states where, unlike California, the law mandates equal taxation on the basis of "current market value," still, no two properties are ever taxed

precisely equally, since this is a virtual impossibility. The difference between California and these other states is in how long it takes to achieve rough, relative equalization of the overall tax burden. There is nothing in the record before this Court on this point that is anything more than pure speculation. In the absence of clear proof to the contrary, this Court should not ascribe any degree of permanent inequality to Article XIII A.

4. The "Right To Travel" Is Not Impaired By Article XIII A.

A State law infringes on the "right to travel" when it actually deters travel, or when it implements a classification which serves to penalize the exercise of that "right to travel." (*Soto-Lopez, supra*, 476 U.S. at 904.)

Amador rejected a "right to travel" challenge to Article XIII A. The California Supreme Court in *Amador* noted that the property tax system prior to enactment of Article XIII A arguable might have deterred people from purchasing property in California and relocating to California because of the unpredictable nature of future tax liability in California's then inflationary real estate market. Arguably, "the right to travel" is inhibited more by current market value property tax systems with no cap on rates or values than under Article XIII A, which established a more fixed and stable measure of property taxation. (22 Cal.3d at 237-238.)

Petitioner postulates that somehow the length of time a person *owns* a parcel of property, regardless of whether they be short- or long-time residents or nonresidents, is to be elevated to the constitutionally protected category of length of residency (Petition For Writ Of

Certiorari, pp. 27, 28 & 29). But no authority, cited by Petitioner or otherwise, creates such a constitutional equivalency between property ownership and residency or between length of property ownership and length of residency.

Zobel v. Williams (1982) 457 U.S. 55 does not support Petitioner. Confronted with a huge windfall from Prudhoe Bay oil lease revenues, Alaska paid a dividend to each adult resident based on one unit for each year of residency in Alaska after 1959, the year Alaska became a state. Unlike Article XIII A's change of ownership provision where a property's classification changes upon a change of ownership, Alaska's classifications were squarely determined and permanently fixed forever based on length of residency. *Zobel* offered no opportunity for a new resident to ultimately achieve a higher relative benefit through the passage of time or at the occurrence of a subsequent event. The relative percentage of benefit for each individual could never change. In fact, *Zobel* involved a law passed in 1980 which established a permanent classification and payment amount based on length of residency retroactively back to 1959.

Justices Brennan, Marshall, Blackmun and Powell, concurring in *Zobel*, stated: "We rejected . . . most forms of discrimination based on length of residence when we adopted the Equal Protection Clause." (457 U.S. 55 at 71.)

Unlike *Zobel*, Article XIII A involves a continuing system of taxation where a long-time resident, upon a subsequent purchase of property, would be taxed higher (on a current fair market value basis) than newer residents owning property.

Hooper v. Bernalillo County Assessor, (1985) 472 U.S. 612, involved a New Mexico annual property tax exemption of \$2,000 for Vietnam veterans provided they were residents of New Mexico before May 8, 1976. Again, eligibility for exemption was determined, permanently and forever, once and only once, with no opportunity for a post-May 8, 1976 resident to gain eligibility. Since the rational basis articulated for the provisions was to encourage Vietnam veterans to move to New Mexico, this Court concluded that, "The [New Mexico] legislature cannot possibly encourage veterans to move to the State by passing such retroactive legislation." (472 U.S. 612, at 619).

Although this Court has determined that residence is one of the distinctions that in general may not be the linchpin on which a tax or other classification makes a material distinction (*Zobel*, 457 U.S. 55, at 71), such determination, as a legal and practical matter, cannot extend to eliminate all timing and length of ownership distinctions as permissible criteria for proper tax classification.

If, as Petitioner's argument requires, this Court were to declare that all timing and length of ownership classifications are forbidden, how then would all the provisions in various federal and state income tax laws providing for preferential long term capital gains treatment after a specified length of ownership survive? How could any of the multitude of mandated time limits or holding periods under various Internal Revenue Code and state tax provisions avoid constitutional infirmity? The simple answer is they could not.

Respondents thus respectfully submit that Article XIII A neither infringes on the "right to travel," nor discriminates on the basis of residency.

CONCLUSION

For the reasons set forth above, this Court should deny the Petition for Certiorari.

Respectfully submitted,

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County Counsel

DAVID L. MUIR*

Principal Deputy County Counsel

COUNSEL FOR RESPONDENTS

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PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on July 15, 1991, I served the within *Respondents' Brief in Opposition* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
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I declare under penalty of perjury that the foregoing is true and correct. Executed on July 15, 1991, at Los Angeles, California.

Peter G. Sandanavicius
(*Original signed*)

MOTION FILED
JUN 24 1991

(2)

NO. 90-1912

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

STEPHANIE NORDLINGER,
Petitioner,

v.

KENNETH HAHN, et al.,
Respondents.

On Petition for Writ of Certiorari
to the Court of Appeal
of the State of California

MOTION FOR PERMISSION TO FILE BRIEF OF
AMICUS CURIAE WILLIAM K. RENTZ

and

BRIEF OF AMICUS CURIAE WILLIAM K. RENTZ
IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

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Amicus Curiae, in propria persona

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IN THE
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STEPHANIE NORDLINGER,
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MOTION FOR PERMISSION TO FILE
BRIEF OF AMICUS CURIAE WILLIAM K. RENTZ
IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

William K. Rentz submits herewith his
Motion for Permission to File his Brief of
Amicus Curiae in support of the Petition for
Writ of Certiorari filed herein by Stephanie
Nordlinger. This motion is based on the
Declaration of William K. Rentz and the
Memorandum of Points and Authorities, below.

DECLARATION OF WILLIAM K. RENTZ

I, William K. Rentz, declare:

I am an attorney licensed to practice law in the State of California and am admitted to practice before the U.S. Supreme Court. I filed amicus curiae briefs in support of petitioner Stephanie Nordlinger's position in this case, when it was before the California Court of Appeal, and I filed an amicus brief in support of her petition for review in the California Supreme Court. I hereby request permission to file an amicus curiae brief in this case, in this court.

On May 30, 1991, I mailed to the attorneys for the petitioner and the respondents herein a proposed consent, requesting their written permission to file an amicus brief in this court. Ms. Nordlinger's attorneys have given their consent, which accompanies this motion.

On June 7, 1991, I spoke by telephone with Albert Ramseyer, one of the attorneys for the two respondents, Kenneth Hahn and

the County of Los Angeles. He acknowledged that he had received my request for his consent. He further stated that the position of his office was to refuse consent to my filing an amicus brief. When I asked him for a reason, he declined to give one.

I believe that the brief I propose to file would assist this court considerably in resolving this case correctly. This brief would bring to the court's attention relevant matter that is not discussed in petitioner Nordlinger's brief.

Ms. Nordlinger's brief clearly and amply describes the factual basis for her equal protection claim. In view of this factual analysis, it is impossible to deny that Proposition 13 treats California property taxpayers unequally. But, as partners in the attack on Proposition 13, Ms. Nordlinger and I take different, yet complementary approaches in characterizing this unequal treatment. Ms. Nordlinger focuses on the unequal treatment of taxpayers who own property of equal value.

My proposed brief focuses on how all California taxpayers are similarly situated yet differently treated, regardless of the value of their property.

Ms. Nordlinger's legal argument focuses on legal principles laid down in various U.S. Supreme Court cases decided since 1978, when Proposition 13 was originally sustained by the California Supreme Court in the case of Amador Valley Joint Union High School District v. State Board of Equalization 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978). Ms. Nordlinger focuses particularly on Allegheny Pittsburgh Coal Co. v. Webster County, 488 U.S. 336, 102 L.Ed.2d 688, 109 S.Ct. 633 (1989), arguing that this decision requires a decision invalidating Proposition 13. Ms. Nordlinger also focuses on the right to travel issue discussed in recent cases, in order to invoke strict scrutiny of the Proposition 13 classifications.

On the other hand, my proposed brief focuses on long-standing, traditional equal protection principles to show how

Proposition 13 violates the Equal Protection Clause, asserting that the Amador Valley decision was wrong even when it was decided. In addition, my brief demonstrates that two purported justifications for Proposition 13 -- the two mentioned in Allegheny's footnote 4 (488 U.S. at 344, fn. 4, 102 L.Ed.2d at 698, fn. 4, 109 S.Ct.633) as possible grounds for distinguishing Proposition 13 from the Webster County assessment practices -- are not at all sufficient to justify the Proposition 13 inequalities.

This court needs to have all these approaches before it, in order to see that Proposition 13 is inescapably surrounded with arguments for its unconstitutionality.

I declare under penalty of perjury that the foregoing is true and correct. Executed on June 21, 1991.

WILLIAM K. RENTZ

MEMORANDUM OF POINTS AND AUTHORITIES

Under Supreme Court Rule 37, this court has discretion to approve a motion to file an amicus brief, when a party refuses consent. Under Rule 37.1, that discretion should be exercised in favor of approval, when it appears that the proposed brief will bring new, relevant matter to the court's attention so as to assist the court in reaching a correct decision in the case. The declaration above shows that this condition is satisfied in the present case. Approval to file the amicus curiae brief should thus be granted.

Dated: June 21, 1991

WILLIAM K. RENTZ

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1990

NO. 90-1912

STEPHANIE NORDLINGER,
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Respondents.

BRIEF OF AMICUS CURIAE WILLIAM K. RENTZ
IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI

William K. Rentz submits herewith his Brief of Amicus Curiae in support of the Petition for Writ of Certiorari filed herein by Stephanie Nordlinger.

I. INTEREST OF AMICUS CURIAE.

Mr. Rentz's interest in this matter is that he is a property taxpayer in the state of California who is directly affected by the inequalities created by Article XIII A of the California Constitution. Mr. Rentz

filed amicus briefs in support of Ms. Nordlinger's position in the court of appeal proceeding below, and also filed a letter brief in support of Ms. Nordlinger's request for a hearing by the California Supreme Court.

II. SUMMARY.

This case challenges the validity of the basic formula decreed by Article XIII A of the California Constitution (Proposition 13 on the 1978 ballot) for the computation of real property taxes throughout the state of California. Stephanie Nordlinger, the petitioner herein, contends, and this amicus curiae supports her contention, that the use of the Proposition 13 tax computation formula to determine property taxes year after year in an inflationary economy violates the requirements of equal protection embodied in the Fourteenth Amendment to the U.S. Constitution.

Briefly stated, the argument presented herein is as follows: In any current tax

year, all property taxpayers in California are similarly situated, but Proposition 13 treats them unequally, by giving different tax computation dates and different standards for tax amounts payable that year to various taxpayers. As a result, long-time owners of property pay low taxes, while recent purchasers of property pay high taxes without any opportunity to qualify for low taxes. In 1978, the California Supreme Court decided the case of Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978), in which the court upheld Proposition 13 against an equal protection challenge. But Amador Valley did not decide the issue that is presented here, or if it did, its decision was wrong then and wrong now. None of the justifications offered in Amador Valley were directed at the unequal treatment brought about by Proposition 13, whereby oldtimers pay low taxes and newcomers pay high taxes, and when those

justifications are directed at that unequal treatment, they fail to justify it. Thus, Proposition 13 violates the requirements of equal protection.

In the brief space allowed, this amicus cannot hope to thoroughly analyze the problems in this case. The goal, therefore, will be to demonstrate that there is a serious constitutional problem here that is deserving of this court's attention, and to do that, the focus will be on the most egregious failings in the Amador Valley decision. Other arguments that may be necessary for petitioner to prevail must be left to further briefing, when this court grants the petition for certiorari.

III. PROPOSITION 13 TREATS SIMILARLY SITUATED TAXPAYERS UNEQUALLY.

Under Proposition 13, as under every other property tax system in the United States, all taxpayers in any given current tax year are similarly situated in several relevant and significant ways. For all

these people, taxes are levied in the current year, based on property that they own in the current year. They are required to pay their taxes in the current year, and they pay their taxes with current year dollars, valued in the context of current year incomes and living expenses. They pay these taxes in order to receive or have available to them in the current year government services which the government purchases on their behalf at current year prices.

Unlike any other property tax system, however, Proposition 13 treats taxpayers differently from one another in a very significant way that lies at the heart of its tax computation formula. Proposition 13 gives all taxpayers in any current tax year different tax computation dates and different standards for tax amounts: those who purchased their property in the current tax year are made to pay tax amounts set in the current year in accordance with current standards, while those who purchased their

property in 1975 or before are permitted to pay tax amounts set in 1975 in accordance with 1975 standards, and those who purchased at points in between pay tax amounts set at those points in between in accordance with the standards then applicable.

In an inflationary housing market, this means that those who purchased their houses in 1975 or before will, in 1991, pay very low taxes; on the other hand, those who purchased their houses in the current year, 1991, will pay very high taxes, without having had any opportunity to qualify for low taxes in 1991 because there were no houses available to be purchased at 1975 prices. Proposition 13 offers no way out of these inequalities. The relative differences in tax amounts paid in 1991 by 1975 buyers and 1991 buyers will be reproduced year after year, indefinitely. The only consolation offered by Proposition 13 to the 1991 buyers is that newer buyers in succeeding years will be hit with still greater inequalities in their tax payments.

Thus, Proposition 13 creates fixed, permanent distinctions between an ever-increasing number of perpetual classes of property owners, based on how long they have owned their property, with the inequalities between the newcomers and oldtimers in the system constantly increasing. In Zobel v. Williams, 457 U.S. 55, 59, 64, 72 L.Ed.2d 672, 102 S.Ct. 2309, 2312, 2315 (1982), this court suggested that such a system could not possibly pass constitutional muster.

IV. AMADOR VALLEY MUST BE DISAPPROVED.

Proposition 13 was adopted by the California voters in June, 1978. Immediately afterwards, it was challenged on numerous grounds, including equal protection grounds, in a proceeding filed initially in the California Supreme Court. In September, 1978, barely 3-1/2 months after the proceeding was initiated, the California Supreme Court sustained Proposition 13 on all grounds, in the case of Amador Valley

Joint Union High School District v. State Board of Equalization, 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978). No review of that decision was sought in this court. Amador Valley has governed the outcome of the present case, both in the trial court and in the court of appeal (see Opinion, page 4). The lower courts have declined to consider fully the equal protection arguments made in this case, believing that those arguments have been foreclosed by the Amador Valley decision. Doubtless, the existence of Amador Valley was a key factor in the California Supreme Court's decision to deny review of the court of appeal decision.

The time has come, however, to recognize that Amador Valley is not good law. The equal protection decision in that case must now be reconsidered, because it was wrong when it was decided, and it is even more clearly wrong today.

V. AMADOR VALLEY FAILED TO ADDRESS ITS JUSTIFICATIONS TO THE UNEQUAL TREATMENT.

A. The justifications for Proposition 13 must address the unequal treatment.

The inequalities brought about by Proposition 13, as described above, are undeniable. These are essential and unavoidable facts that are built into the Proposition 13 tax computation formula when it is applied in an inflationary economy.

The key question, then, is whether the inequalities can be justified. If they cannot be justified, then the unequal treatment must be found to violate the Equal Protection Clause.

It is a basic principle of equal protection jurisprudence that the justification offered must address the unequal treatment brought about by the enactment and provide an adequate reason for that particular discrimination. A justification that is directed towards some other aspect of the enactment will not suffice. This principle applies, regardless

of the level of scrutiny used by the court in examining the proposed justification. Conversely, as the court noted in Williams v. Vermont, 472 U.S. 14, 20-21, 86 L.Ed.2d 11, 105 S.Ct. 2465, 2470 (1985), when there is "no unequal treatment," there is "no necessity to justify any discriminatory impact," and there is also "no occasion to address the level of scrutiny to be applied to the discrimination or to identify the State's interest in imposing the differential treatment."

The basic principle -- that the justification must address the unequal treatment and explain why the unequal treatment is arguably rational or fair -- was in existence long before Amador Valley was decided. More particularly, it was actually used as a basis for invalidating state action under the Equal Protection Clause using the rational basis test. See F.S. Royster Guano Company v. Commonwealth of Virginia, 253 U.S. 412, 415-16, 64 L.Ed. 989, 40 S.Ct. 560, 562 (1920) (state's

purpose in discriminating between Virginia corporations with both out-of-state and in-state income and those with only out-of-state income was a legitimate purpose, but it did not explain why two groups should be treated differently); Reed v. Reed, 404 U.S. 71, 76, 30 L.Ed.2d 225, 92 S.Ct. 251, 254 (1971) (state's purpose of reducing probate court workload was legitimate purpose, but still did not explain why men should be preferred over women); U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 535-538, 37 L.Ed.2d 996, 93 S.Ct. 2821, 2826-27 (1973) (preventing fraud a legitimate purpose, but does not explain different treatment). This principle has continued to be applied, resulting in the invalidation of state actions, since Amador Valley. See, e.g., City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 449-50, 87 LE2d 313, 105 S.Ct. 3249, 3259-60 (1985) (legitimate concern about flood plains, residential densities, population concentrations, congestion on streets, and

fire hazards applied to all group living arrangements, not just homes for mentally retarded).

There are several pre-Amador Valley cases that are often cited as examples of the minimal scrutiny used when the rational basis test applies. Nevertheless, in upholding state enactments against equal protection challenges, even these cases applied the basic principle and found justifications that addressed the unequal treatment. See Williamson v. Lee Optical, 348 U.S. 483, 489, 99 L.Ed. 563, 75 S.Ct. 461, 465 (1955) (state could legitimately assume there was a difference between prescription glasses and over-the-counter glasses that justified different treatment of sellers of the two types of glasses); McGowan v. Maryland, 366 U.S. 420, 426-28, 6 L.Ed.2d 393, 81 S.Ct. 1101, 1105-6 (1961) (state could assume a difference in demand for different products, based upon the type of product and the location of the vendor's place of business, that justified

differential treatment); Ferguson v. Skrupa, 372 U.S. 726, 732-33, 10 L.Ed.2d 93, 83 S.Ct. 1028, 1032 (1963) (lawyers have different training and skills that justify their different treatment); Dandridge v. Williams, 397 U.S. 471, 486, 25 L.Ed.2d 491, 90 S.Ct. 1153, 1162 (1970) (maximum welfare grant, treating large families less favorably than small families, was reasonably necessary to equalize treatment of welfare recipients with treatment of the working poor, who do not get paid based on family size); Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 360-62, 365, 35 L.Ed.2d 351, 93 S.Ct. 1001, 1004-6 (1973) (corporations are inherently different from individuals in ways that are significant to the conduct of business, and can therefore be taxed differently); and Kahn v. Shevin, 416 U.S. 351, 352-55, 40 L.Ed.2d 189, 94 S.Ct. 1734, 1736-37 (1974) (tax exemption given to widows but not widowers justified by difference in economic situations of women and men).

Perhaps the simplest and clearest example of this basic principle in action is found in Reed v. Reed, 404 U.S. 71, 30 L.Ed.2d 225, 92 S.Ct. 251 (1971). In that case, an Idaho statute established a priority list for the appointment of administrators of decedents' estates. Included in one level of priority were certain male and female relatives of the deceased. As a secondary rule, the statute provided that in case of a contest for appointment between a male and a female relative within this level of priority, the male was to be chosen. The state argued that there was a legitimate reason for this discrimination: it reduced the workload of the probate courts by eliminating one class of conflicts that the courts otherwise would have to resolve with a hearing. 404 U.S. at 76, 92 S.Ct. at 254. The Supreme Court acknowledged that this was a legitimate purpose; and it was clear that the discrimination served the purpose. But the court found that this preference for males

violated the Equal Protection Clause, because there was no difference between males and females with regard to their service as administrators that would indicate that the preference for males was reasonable, and there was nothing in the purpose offered that would lead naturally or logically to choosing males over females. In this context, the court said, the Idaho statute embodied "the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause." 404 U.S. at 76-77, 92 S.Ct. at 254.

As demonstrated by these cases, there are two approaches that can and must be taken to justify a discrimination under the rational basis test. First, the necessary rational relationship between the legitimate state purpose and the discrimination at issue can be shown when the legitimate state purpose arguably points with some reasonable degree of accuracy to the class benefited or burdened and provides some arguably good reason why the benefits or burdens should be

so distributed. Second, starting from a different angle, the rational relationship can be shown when there is arguably an inherent difference between the class benefited and the class burdened that provides an arguably good reason why the benefits and burdens should be so distributed.

It should be noted that these two approaches are not really separate tests, but rather, two different ways of looking at the same test. Whenever one of these is satisfied, you will find that the other is also. Simply stated, sometimes it is easier to approach the problem by looking first at the state's asserted purpose to see where it points, while at other times it is easier to approach the problem by looking first at the differences between the classes to see whether they provide a good reason to discriminate. Whichever approach is taken first, the second approach then serves as a double check.

B. Amador Valley sought to justify the acquisition value system as a whole, instead of the inequalities within that system.

In Amador Valley, the court was presented with an equal protection case in which clear inequalities were identified. However, while the court offered in return a series of justifications for Proposition 13's acquisition value system of taxation taken as a whole, the court failed to address any of these justifications to the inequalities within that system.

The court's justifications for Proposition 13 are found in one paragraph, 22 Cal.3d at 235. In its entirety, the court's reasoning is as follows:

"By reason of section 2, subdivision (a), of the article, except for property acquired prior to 1975, henceforth all real property will be assessed and taxed at its value at date of acquisition rather than at current value (subject, of course, to the 2 percent maximum annual inflationary increase provided for in subdivision

(b)). This "acquisition value" approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. For example, a taxpayer who acquired his property for \$40,000 in 1975 henceforth will be assessed and taxed on the basis of that cost (assuming it represented the then fair market value). This result is fair and equitable in that his future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after

acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. On the other hand, a person who paid \$80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property. Seen in this light, and contrary to petitioners' assumption, section 2 does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purchase. This is an arguably reasonable basis for assessment."

(Emphasis in original, in italics).

The first task here is to identify the target of the court's justification efforts. In this paragraph, the court is seeking to

justify what it calls the "acquisition value approach to taxation." In the first sentence of the paragraph, the court notes that "all" property will be taxed "at its value at date of acquisition." In the second sentence, the court finds support for the " 'acquisition value' approach to taxation." In the third sentence it is not just an "approach," it is the acquisition value "system" that is being justified. And finally, towards the end of the paragraph, the court refers to this method of taxation as using "an acquisition value basis." Note also that in each of the first three sentences, the court contrasts the acquisition value approach with the current value approach, thus implying that each approach is a complete, unique, and presumptively valid system of taxation.

Note, however, what the court does not say in this paragraph. The court does not say that it is justifying any classification, any discrimination, or any unequal treatment. That is simply not in

the court's focus. Rather, the court is attempting to justify the acquisition value system as a whole. That is the fatal flaw. What must be justified here is the unequal treatment -- the fact that under Proposition 13, in any particular year the taxpayers are given different tax computation dates, and as a result, the old owners pay low taxes while the new buyers pay high taxes without any opportunity to qualify for low taxes. This discrimination the Amador Valley court fails to justify.

C. Amador Valley sought to characterize and justify Proposition 13 as a system that treated everyone the same.

At this point, a careful reader may rightfully note that in its justification paragraph, the Amador Valley court does mention that the 1975 purchaser of a house would pay low taxes, while the 1977 purchaser of an identical house would pay high taxes. But look closely at what the court actually says about this situation. About the 1975 buyer, the court says:

"For example, a taxpayer who acquired his property for \$40,000 in 1975 henceforth will be assessed and taxed on the basis of that cost (assuming it represented the then fair market value). This result is fair and equitable in that his future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control."

22 Cal.3d at 235. Here, in the second sentence, the court is obviously trying to justify something -- but it is not the unequal treatment. Rather, the court is simply justifying the application of the acquisition value approach to the single 1975 buyer mentioned in the first sentence of this example. At this point, the court is making a due process argument, not an equal protection one. See Ross v. Moffitt,

417 U.S. 600, 609, 41 L.Ed.2d 341, 350, 94 S.Ct. 2437 (1974) (" 'Due process' emphasizes fairness between the State and the individual dealing with the State, regardless of how other individuals in the same situation may be treated. 'Equal protection.' on the other hand, emphasizes disparity in treatment by a State between classes of individuals whose situations are arguably indistinguishable."); Evitts v. Lucey, 469 U.S. 387, 405, 83 L.Ed.2d 821, 835-36, 105 S.Ct. 830 (1985).

The court then goes on to discuss the 1977 buyer, as follows:

"On the other hand, a person who paid \$80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property. Seen in this light, and contrary to petitioners' assumption, section 2 does not unduly discriminate against persons who acquired their property after 1975, for

those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purchase."

22 Cal.3d at 235. Here, in the first sentence, the court acknowledges that the 1977 buyer's taxes will be higher than the 1975 buyer's. But look closely at what the court does and does not do next. The court does not acknowledge any lack of equal opportunity between the 1977 and 1975 buyer with regard to qualifying for low, current year taxes. It does not try to justify the unequal taxes that it does acknowledge by providing some sort of reason for them. Instead, the court denies that there is any unequal treatment! "Contrary to petitioners' assumption," the court says, those who buy in 1977 are "taxed in precisely the same manner as those who purchased in 1975."

Thus, the court maintains a constant course throughout this paragraph, from its

initial assertion that "all" real property will be taxed using the same system, to its final assertion that all taxpayers are treated "in precisely the same manner" by that system. In the end, it is clear that Amador Valley did not attempt to justify any unequal treatment. It sought to characterize Proposition 13 as a tax system that treated everyone in precisely the same manner, and then sought to justify it on that basis.

VI. AMADOR VALLEY'S FAILURE TO ADDRESS ITS JUSTIFICATION EFFORTS TO THE UNEQUAL TREATMENT MAKES IT DISTINGUISHABLE FROM THE PRESENT CASE.

At this point, a skeptical reader may well ask, what difference does Amador Valley's failure to address the unequal treatment make here? The difference is that because Amador Valley did not address the unequal treatment, it did not address the issue involved in the present case, and therefore, it is not precedent for the present case. Therefore, the lower court should not have relied on Amador Valley.

General principles of stare decisis require that Amador Valley be distinguished. So also do the cases of Pace v. Alabama, 106 U.S. 583, 27 L.Ed. 207, 1 S.Ct. 637 (1883), and McLaughlin v. Florida, 379 U.S. 184, 189-91, 13 L.Ed.2d 222, 226-28, 85 S.Ct. 283 (1964). If certiorari is granted, this point will be developed in detail.

VII. THE JUSTIFICATIONS FOUND SUFFICIENT IN AMADOR VALLEY FAIL TO SUPPORT THE PROPOSITION 13 INEQUALITIES.

A. Amador Valley failed to confront the pertinent questions.

Amador Valley's failure to address its justifications to the unequal treatment makes another significant difference: because Amador Valley did not identify the unequal treatment as the target of its justification efforts, it did not confront the pertinent questions that must be answered when justifying unequal treatment. The court did not consider whether there was any inherent difference between the new buyers and the long-term owners that

provided a good reason to make the new buyers pay higher taxes, and the court did not consider whether there was any legitimate purpose that pointed to the new buyers and provided a good reason to make them pay higher taxes. Had the court done so, it could not have sustained Proposition 13.

Again, the shortness of space in this brief prevents a comprehensive analysis. However, the basic point can be made with a step-by-step analysis of the two Amador Valley justifications for Proposition 13 that this court recently suggested might have some merit. See Allegheny Pittsburgh Coal Co. v. Webster County, 488 U.S. 336, 344, fn. 4, 102 L.Ed.2d 688, 698, 109 S.Ct. 633 (1989).

B. The "original purchase price" justification fails.

The Amador Valley court's first justification -- paraphrased in part, quoted in part, and applied to the unequal treatment -- goes essentially as follows (22 Cal.3d at 235):

Taxes should be based on "the original cost of the property" because that is the price that each owner "was willing and able to pay for his property," and therefore, differences in taxes will be based "on the owner[s'] free and voluntary acts of purchase."

That justification sounds plausible; but sounding "plausible" is not enough. Even using the rational basis test, the justification must in some substantial way "support the classification at issue." Williams v. Vermont, supra, 472 U.S. at 26, 86 L.Ed.2d 11, 105 S.Ct. at 2473. "The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." City of Cleburne v. Cleburne Living Center, supra, 473 U.S. at 446, 87 LE2d 313, 105 S.Ct. at 3258. So now ask the pertinent questions: Does this purpose point to the new buyers and provide a good reason why they should pay higher

taxes? Is there a difference between the new buyers and the long-term owners that provides a good reason to make the new buyers pay higher taxes?

The answer implicit in Amador Valley is this: The goal here is to reward people in proportion to their free and voluntary acts. Those who freely choose high-priced property should pay high taxes, while those who freely choose low-priced property should pay low taxes. There is a difference in this regard between the new and old buyers -- the new ones bought high-priced property, the old ones bought low-priced property.

This answer is wrong, however, because it ignores an essential aspect of the Proposition 13 inequalities: The new buyers had no opportunity to purchase low-priced homes so as to qualify for current low taxes; therefore, they did not "freely" choose high-priced property. One of the basic concepts of fairness in our system of justice is that when different treatment is predicated on free and voluntary acts, all

persons affected by the different treatment must start out with an equal opportunity to reap the benefits through their actions. At very least, the system that confers the burdens and benefits must allow all of its subjects the same freedom to reap those benefits; it must not tie the hands of one group, to the benefit of another. In equal protection jurisprudence -- even in rational basis equal protection jurisprudence -- basic concepts of fairness count. See Jiminez v. Weinberger, 417 U.S. 628, 632, 41 L.Ed.2d 363, 94 S.Ct. 2496, 2499 (1974) ("But visiting this condemnation on the head of an infant is illogical and unjust. Moreover, imposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing"). Amador Valley itself conceded that basic concepts of fairness should be applied to this case when it said (22 Cal.3d at 235), "... the system may operate on a fairer basis..., "

and, "This result is fair and equitable...."

Proposition 13, however, does not allow all current year taxpayers the same freedom to qualify for low, current year taxes. Thus, with respect to this justification, there may be a legitimate purpose asserted and there may be a difference between the new buyers and the long-term owners, but neither that purpose nor that difference provides a good reason to make the new buyers pay higher taxes, because the required equality of opportunity is completely lacking.

C. The "unrealized paper gains" justification fails.

The second justification goes essentially as follows (22 Cal.3d at 235):

The government should not tax unrealized paper gains (the "unduly inflated, current value" of a long-term property owner's property) because:

(1) paper gains to the taxpayer result in part from "sales to third parties over which sales he can exercise no control," and

(2) the taxpayer might not be "willing and able" to pay the increased taxes based on paper gains.

Again, the justification sounds plausible. But again, ask the two pertinent questions, and a different result appears.

There is a difference between new buyers and long-term owners with respect to paper gains: the long-term owners have them and the new buyers don't. That by itself, however, does not provide a good reason to make the new buyers pay higher taxes. Paper gains equal equity, and equity equals wealth. That makes the long-term owners wealthier than the new buyers, so the long-term owners ought to be paying the higher taxes, not the new buyers.

With respect to the next element in this justification -- the lack of control over the current value of the property, resulting in part from sales to third parties -- both new buyers and long-term owners are in exactly the same situation. The current value of each of their houses

(no matter that one has just recently purchased and the other has not) is brought about by market forces that are essentially beyond the control of each. The prospective new buyer who tries to find a seller who will sell to him in 1991 at 1975 prices is out of luck. No one will sell to him at that price -- he is stuck paying 1991 prices, and can do nothing about that fact. All the old owners, of course, could help out the new buyer somewhat -- they could all put their houses on the market, and so by increasing the supply of housing lower the prices. But they don't do that. They hold onto their houses, and so contribute to the high price the current buyer must pay, in exactly the same degree as the new buyer contributes to the high current value of the long-term owners' homes by his "willingness" to buy someone else's house at 1991 prices.

With respect to the next element -- the "willingness to pay high taxes" element -- it must be assumed that all persons are similarly situated. No one wants to pay

high taxes if they can help it.

With respect to the last element in this justification -- the "ability to pay" element -- there is a difference between new and old buyers, but it doesn't justify the Proposition 13 result: if anyone is less able to pay high taxes, it is the new buyer, not the long-term owner. The new buyer in 1991, on average, has a 1991 income, and from that income he pays exorbitantly high housing payments, with little left over for taxes. The long-term owner in 1991, on average, also has the same 1991 income, but he pays extraordinarily low housing payments, and has a lot of money left over for taxes. This difference does not provide a good reason to make the new buyers pay higher taxes.

Thus, this purported justification also fails to support the Proposition 13 inequalities.

VIII. CONCLUSION.

This case presents a serious question of constitutional law. Proposition 13 has created a property tax system in California that holds as one of its basic premises that people should be treated differently merely because one happens to have been born later than another, or happens to have moved to California later than another, or happens to be a mortal person rather than an immortal corporation, or happens on account of any other fortuitous event to have purchased a house later than another. It makes the newcomer to the property tax system pay higher taxes than the oldtimer, merely because the newcomer enters the system later than the oldtimer when prices are higher and opportunity to qualify for low taxes non-existent -- and then it goes on and on, year after year perpetuating the old inequalities and creating still newer and grander ones that make the initial inequalities pale by comparison.

In Zobel v. Williams, this court suggested that such a system could never be justified. In a footnote in Allegheny Pittsburgh Coal, this court suggested that perhaps it could be justified. The time has now come to resolve the issue. The writ of certiorari should be granted. Proposition 13 violates the Equal Protection Clause of the 14th Amendment.

Respectfully submitted,

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No. 90-1912

Supreme Court, U.S.

FILED

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In The
Supreme Court of the United States
October Term, 1990

STEPHANIE NORDLINGER,
Petitioner,
v.

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County and the
COUNTY OF LOS ANGELES,
Respondents.

Petition for Writ of Certiorari
to the Court of Appeal of the
State of California

BRIEF AMICUS CURIAE OF HOWARD JARVIS
TAXPAYERS ASSOCIATION AND PAUL GANN'S
CITIZENS COMMITTEE IN OPPOSITION TO
PETITION FOR CERTIORARI

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No. 90-1912

In The

Supreme Court of the United States

October Term, 1990

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County and the
COUNTY OF LOS ANGELES,

Respondents.

Petition for Writ of Certiorari
to the Court of Appeal of the
State of California

BRIEF AMICUS CURIAE OF HOWARD JARVIS
TAXPAYERS ASSOCIATION AND PAUL GANN'S
CITIZENS COMMITTEE IN OPPOSITION TO
PETITION FOR CERTIORARI

IDENTITY AND INTERESTS OF AMICI

Pursuant to Supreme Court Rule 37, Howard Jarvis
Taxpayers Association (HJTA) and Paul Gann's Citizens
Committee (PGCC) respectfully submit this brief amicus
curiae in opposition to Stephanie Nordlinger's petition
for certiorari. Written consent to the filing of this brief
has been granted by counsel for all parties. Copies of the

letters of consent have been lodged with the clerk of this Court.

The Howard Jarvis Taxpayers Association is a non-profit, tax-exempt California corporation. It was organized in 1978 by the late Howard Jarvis, a coauthor of Proposition 13.¹ Under its former name of California Tax Reduction Movement, HJTA was organized for the express purpose of defending the tax reduction benefits of Article XIII A. HJTA has over 200,000 members who actively support its ongoing tax reduction efforts.

Paul Gann's Citizens Committee is an incorporated organization which seeks to advance the interests of taxpayers. It was founded by the family of Paul Gann, a coauthor of Article XIII A, who recently passed away. It was created to continue the work of Paul Gann who sponsored several statewide ballot measures seeking to protect and expand Article XIII A.

Represented by the undersigned counsel, HJTA and Paul Gann filed an amicus curiae brief in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336 (1989), seeking to ensure that any decision in that case did not materially affect the validity of Article XIII A. In *Allegheny Pittsburgh*, this Court expressly stated that its decision did not address the validity of Article XIII A. 488 U.S. at 344 n.4.

Notwithstanding the express language of *Allegheny Pittsburgh*, three separate actions were filed in California courts seeking invalidation of Article XIII A based on that

¹ Proposition 13 added Article XIII A to the California Constitution and will be referred to throughout as "Article XIII A."

decision. HJTA and PGCC participated as amici curiae at all stages of these cases and, with respect to the case at bar, both briefed and argued the issues before the California Court of Appeal in the proceedings below.

OPINION BELOW

The opinion of the California Court of Appeal is reported at 225 Cal. App. 3d 1259 (1990).

STATEMENT OF THE CASE

Petitioner filed this action in the Los Angeles County Superior Court on September 18, 1989, against the County of Los Angeles and the county assessor. The trial court sustained defendants' demurrer without leave to amend which was subsequently upheld by the California Court of Appeal for the Second Appellate District in a published decision.

STATEMENT OF FACTS

Petitioner is a resident of the City of Los Angeles who purchased her home in 1988 for \$170,000. Upon purchase, her house was reassessed to current market value as allowed by Article XIII A. Under the terms of Article XIII A, petitioner will pay annually a maximum property tax of 1% of value.² In addition, future increases

² The 1% may be exceeded only for voter approved indebtedness.

in the taxable value of petitioner's residence will be limited to 2% annually. There is no dispute that petitioner's tax liability is based on the price she voluntarily paid for her home or that she was fully aware of the tax consequences of her purchase.

SUMMARY OF ARGUMENT

Article XIII A of the California Constitution was enacted to advance the specific policies of tax limitation, prevention of taxation on paper gains in the value of property, certainty in future property tax liability, and provision of a stable revenue source for local governments. More than 12 years of experience have demonstrated that Article XIII A has indeed advanced its intended policies.

Because Article XIII A advances legitimate policies, it does not violate the Equal Protection Clause of the United States Constitution. Decisions from this Court firmly establish that states have broad discretion in fashioning tax laws as long as such laws are not palpably arbitrary and advance legitimate policies.

The argument that Article XIII A restricts the right to travel is factually and legally flawed. First, petitioner has no standing to assert an impairment of the "right to travel." Second, because Article XIII A in no way distinguishes California residents from nonresidents, petitioner's reliance on residency cases is misplaced.

ARGUMENT

This suit is a direct challenge to Article XIII A, a system of property taxation overwhelmingly supported, and deliberately chosen, by the People of the State of California. If Article XIII A is declared unconstitutional, as petitioner desires, property owners statewide would have to pay billions of dollars in additional property taxes.³ Amici taxpayer organizations Howard Jarvis Taxpayers Association and Paul Gann's Citizens Committee file this brief in full support of Article XIII A's methods and policies of property taxation and urge this Court to deny the petition for certiorari.

I

THE DELIBERATE POLICY CHOICES REFLECTED BY ARTICLE XIII A FAR EXCEED THE MINIMUM EQUAL PROTECTION REQUIREMENT OF "RATIONAL BASIS"

For this lawsuit ultimately to succeed, petitioner must demonstrate that there exists no rational basis for Article XIII A's method of taxing property. Since this is an impossible showing as a matter of law, this Court should deny the petition for certiorari. Amici will demonstrate that not only does Article XIII A have a rational basis, its provisions have worked precisely as intended to further its legitimate goals and, more importantly, Article XIII A is simply *good tax policy*. It is not amici's intention to

³ Proposition 13 reduced property taxes \$7 billion just in its first year of operation. University of California, *Proposition 13, 10 Years Later, Summary of Proceedings of Public Issues Forum*, at 2.

overstate their case. The discussion of Article XIII A as sound policy serves only to demonstrate that it more than surpasses the minimum equal protection requirement of "rational basis."

A. Article XIII A Is a Unique Property Tax System Which Advances the Policies of Tax Limitation, Tax Certainty, Limitation of Taxation on Paper Gains in the Value of Property, and Stable Revenue Sources

Simply stated, Article XIII A uses *acquisition value* as a basis of taxing property and *not* current market value. For purposes of equal protection analysis, the classification of taxpayers is based on year of purchase. For example, purchasers of property in 1982 represent a class of individuals who have their property tax based on the value of the property in that year. In a real estate market with rapidly increasing values, Article XIII A generally favors those who have owned their property for a longer period of time. From this, petitioner argues that Article XIII A constitutes an *ipso facto* violation of equal protection. Petition for Writ of Certiorari (Petition) at 15-26.

What petitioner completely ignores is that Article XIII A conforms to the Equal Protection Clause for the simple reason that it is supported by very specific policies which are furthered by its operation. The existence of those policies—policies which were articulated prior to Article XIII A's enactment—distinguishes it from this Court's decision in *Allegheny Pittsburgh*.

Article XIII A is the only property tax system in the country which protects property owners from being taxed

on the paper gains in the value of their property and provides certainty in future property tax liability, while at the same time providing ever-increasing property tax revenues to local governments. This did not happen by accident. Article XIII A was well thought out and continues to work today precisely as the drafters—and voters—intended back in 1978.

Article XIII A is not made up of disparate, unrelated provisions. Rather, it "consists of four major elements: a real property *tax rate* limitation (§ 1), a real property *assessment* limitation (§ 2), a restriction on *state* taxes (§ 3), and a restriction on *local* taxes (§ 4)." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 231 (1978) (emphasis in original). Each of these provisions are "interrelated and interdependent, forming an interlocking 'package' . . . to assure effective real property tax relief." *Id.* Petitioner's suggestion that Article XIII A can be partially dismantled and still remain effective ignores the fact that Article XIII A's provisions are interrelated to accomplish its intended goals.

Article XIII A provides substantial property tax protection for Californians in two ways. First, it establishes a maximum 1% *rate* of tax on "full cash value." Cal. Const. Art. XIII A, § 1(a). Under this provision, the *highest* property tax which can be levied initially on a house with a purchase price of \$100,000, exclusive of voter approved indebtedness, is \$1,000. Second, and more importantly for the purposes of this lawsuit, Article XIII A defines the term "full cash value" in a manner which assures that total property tax liability for any given parcel does not increase more than 2% annually. Cal. Const. Art. XIII A, § 2. For example, even if a \$100,000 house increases in

market value by 10% in one year to \$110,000, its *taxable value* for the following year cannot exceed \$102,000. The purposes of Section 2 are clear. It prevents property owners from being taxed on the mere paper gains in the value of their property and provides certainty in property tax liability.

The initial "full cash value" under Article XIII A is determined by the value designated on the 1975-76 tax bill. In addition, under Section 2 of Article XIII A, property is reassessed to current market value when it is sold. The reason for this provision should be obvious. If all parcels of privately owned property in California were taxed at 1% of the "full cash value" (starting with the 1975-76 tax year), limited to only 2% increases annually and without reassessment upon change of ownership, the total amount of property tax revenues coming into local governments in California would continually *decrease* in terms of real dollars. This is because inflation has significantly outpaced the modest Article XIII A growth factor since its adoption. Tax Foundation, *Facts and Figures on Government Finance*, at 47 (1990 ed.). It should not be surprising then, that because of the reassessment provision and the rapid increase in real estate values, that the increases in property tax revenues coming into California local governments have *exceeded* inflation.⁴ Thus, the property tax relief provisions of Article XIII A are only

⁴ For example, in tax years 1987-88 to 1988-89 the growth for county assessed property (including the homeowners' exemption but not including other exemptions) increased 9.8% to \$1.2 trillion. *Report of the State Board of Equalization* (Oct. 1988).

half the equation. The reassessment upon change of ownership provision is an integral part of Article XIII A's operation which advances the policy of providing a stable revenue source for local governments.

Article XIII A is a departure from the traditional "current market value" systems. It was meant to be. "Current market value" systems do not reflect the careful balance between the needs of property owners and the needs of government. In short, "current market value" systems are inferior to Article XIII A.

B. Article XIII A Does Not Violate the Equal Protection Clause of the United States Constitution

Petitioner contends that a state which does not tax property based on current market value violates the Equal Protection Clause of the United States Constitution. This contention is without merit.

1. States Have Broad Discretion To Advance the Policies of Their Choice in the Taxation of Property

A state's disparate treatment of taxpayers does not violate the principle of equal protection as long as the classification is founded on a legitimate state policy which is advanced by the classification. *Kahn v. Shevin*, 416 U.S. 351, 355 (1974). In *Kahn*, this Court addressed the constitutionality of a Florida property tax exemption for widows only. A widower challenged this distinction on equal protection grounds. *Id.* at 352. This Court first observed that

"[a] state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. . . . This principle has weathered nearly a century of Supreme Court adjudication" *Id.* at 355-56 (citations omitted; footnote omitted).

This Court then concluded that the different treatment of widows and widowers " 'rest[ed] upon some ground of difference having a fair and substantial relation to the object of the legislation.' " *Id.* at 355 (citations omitted).

This Court's deference to the states on matters of tax policy can be traced back at least as far as *Bell's Gap Railroad Company v. Commonwealth of Pennsylvania*, 134 U.S. 232 (1890). There the Court concluded that "the XIVth Amendment was not intended to compel the States to adopt an iron rule of equal taxation." *Id.* at 237. The states may adopt distinctions between parcels of property of similar value, "so long as [such laws] proceed within reasonable limits and general usage, [and] are within the discretion of the State Legislature, or the people of the State in framing their Constitution." *Id.* at 237. *Bell's Gap Railroad Company* is persuasive because there, as here, the plaintiff contended that deviation from fair market value violated the Equal Protection Clause.

Since *Bell's Gap*, this Court has repeated the rule that "the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 355 (1973). See, e.g., *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 88 (1940) ("in

taxation, even more than in other fields, legislatures possess the greatest freedom in classification" (footnote omitted)); and *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (1959) ("the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interests").

Based on these cases and others from this Court, the California Supreme Court rejected an equal protection challenge to Article XIII A shortly after it was enacted. The basis for its ruling was that Proposition 13 was logically related to its intended goals: The

" 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d at 235 (emphasis added).

2. Article XIII A's Classification of Property Owners Based on Original Purchase Price Is Crucial to Its Legitimate Objectives

Prior to the enactment of Article XIII A, the operation of the traditional current market value system in California simply was not working. California's exceptionally volatile real estate market had literally taxed many families out of their homes. The drafters of Article XIII A faced

a choice between two extremes: (A) continue current market value assessment of all properties or (B) hold assessments of all properties at the market value as of some date certain (e.g., 1974-75).

Choice (A) does not provide the certainty and predictability the proponents of Article XIII A sought to achieve.⁵ Even with the maximum rate set at 1% of current market value, owners would not be able to predict future market values. Neither would they be protected against rapid escalation of their property taxes. Changing demand for property or inflation could drive up market values and property taxes in unpredictable ways—independently of owners' ability to pay the resulting property taxes. It also would have meant a revenue stream to the tax levying governments fully responsive to changing market values.

Choice (B) would have led to full predictability of future property taxes. At the same time it would have meant a stream of property tax revenues unresponsive to changing market values and a revenue stream guaranteed to decrease in terms of real dollars, potentially crippling local services.

⁵ Petitioner has questioned the legitimacy of "certainty" in future property tax liability as a policy justification behind Article XIII A. Petition at 23. However, as noted by Adam Smith, "[t]he certainty of what each individual ought to pay is, in taxation, a matter of so great importance, that a very considerable degree of inequality . . . is not near so great an evil as a very small degree of uncertainty." Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, at 826 (Glasgow ed. 1979).

The Article XIII A drafters rejected those unacceptable extremes and created an inspired third alternative: resetting the assessed value of property at its market value whenever sold. Thus, the new owner is provided with predictability as to the future burden of property taxes and the property tax system as a whole is much more revenue responsive since the assessed value base will respond over time to higher demand and inflation.

The "cost" of this inspired choice by the drafters was the creation of the *appearance* of tax "inequity"—that is, owners of otherwise identical properties paying very different property taxes *during any given year*. Yet, in considering the value of property at the time of purchase, a prospective owner will consider the net benefits of ownership *over time*. The higher the anticipated property tax liability, the lower the net benefits; the lower the anticipated property tax liability, the higher the net benefits. The higher the future net benefits, the more a property is worth at the moment of purchase; the lower the future net benefits, the less a property is worth.⁶

Every new buyer anticipates moving through a pattern of declining reassessment relative to the then current market value of his or her property as the years pass. All are treated equally in the sense that all begin at 100% of market value and progressively shift to lower and lower

⁶ Capitalization of property tax liability into the value of property is an elementary economic concept accepted for decades. See Marshall, *Principles of Economics* (8th ed. 1920), Appendix G: The Incidence of Local [Tax] Rates, §§ 2-5 at 656-57; Brookes, "The Tax Capitalization Hypothesis," *Policy Review*, at 24-30 (Winter, 1987).

assessments relative to the then current market value. Whatever the initial tax "disadvantage" a new owner appears to have, relative to his or her neighbor, is made up as time goes on.

The *appearance* of tax inequity in any given year arises, not because the holding period burden differs depending upon date of purchase (it does not), but because individual owners are at *different stages* in the holding period—some are in their first year, some in their second year, some in their third year, etc.

Petitioner's argument that Article XIII A advances no legitimate policy cannot be taken seriously. Article XIII A is perhaps the most careful, fair, and logical property tax system ever devised. One may quibble over the relative merits of those policies, but there can be no legitimate argument that there is no rational basis for the assessment provisions of Article XIII A.

3. *Allegheny Pittsburgh* Does Not Control This Case Because There Was No Deliberate Policy Choice Being Advanced by the "Aberrational Enforcement Policy" of a Single County Assessor

In her contention that Article XIII A violates the federal Equal Protection Clause, petitioner relies heavily (if not exclusively) on this Court's decision in *Allegheny Pittsburgh*, 488 U.S. 336. Petition at 13-19. Petitioner's reliance on this decision is misplaced for two fundamental reasons.

First, it is difficult to understand petitioner's singular reliance on a case which went out of its way to say it did

not apply to the legal challenge which petitioner now brings. This Court in *Allegheny Pittsburgh* expressly stated:

"We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as 'Proposition 13.' Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred or constructed upon, or in a limited manner for inflation. Cal Const, Art XIII A, § 2 (limiting inflation adjustments to 2% per year). The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." *Id.* at 344 n.4.

In the quote above, this Court simply said that it was not considering a case where the classification between taxpayers was advancing a state policy.

The second reason *Allegheny Pittsburgh* does not apply to Article XIII A is suggested by the distinction drawn by this Court itself in the same footnote. Specifically, this Court seemed to have little trouble distinguishing between "the law of a State, generally applied" and the "aberrational enforcement policy" of a single county assessor. The distinction is crucial. *The very first sentence of this Court's decision in Allegheny Pittsburgh identifies West Virginia as having a current market value system of property taxation: "The West Virginia Constitution guarantees to its citizens that, with certain exceptions, 'taxation shall be equal and uniform throughout the State, and all property,*

both real and personal, shall be taxed in proportion to its value ' W Va Const, Art X, § 1." *Id.* at 338. There was no argument in that case, nor is there here, that this provision means anything other than current market value. While California has a similar provision (Article XIII, Section 1), Article XIII A was added to define "full cash value" in a very unique way to further the legitimate purposes of tax limitation, tax certainty, and revenue stability.

The critical difference between West Virginia and California for the purposes of assessing the merits of petitioner's argument is whether the system of taxation itself mandates adherence to a current market value system. As evident from a comparative analysis of each state's constitutional provisions, as well as the ballot materials accompanying Proposition 13, it is indisputable that California's classifications based on acquisition value are founded in state policy, whereas the single county assessor in West Virginia was acting *contrary* to the state policy mandating current market valuation. Petitioner has simply failed to grasp this dispositive distinction.⁷

⁷ The California Supreme Court itself in *Amador Valley* recognized that equal protection cases involving jurisdictions which require taxation on current market value are *meaningless*:

"[Such] cases . . . involve[] constitutional or statutory provisions which *mandated* the taxation of property on a *current value* basis. These cases do not purport to confine the states to a current value system under equal protection principles or to state an exception to the general rule accepted both by the United States Supreme Court and by (continued)

II

ARTICLE XIII A DOES NOT RESTRICT MOBILITY AND, IN ANY EVENT, PETITIONER HAS NO STANDING TO ASSERT SUCH A CLAIM BECAUSE SHE IS NOT A NEWCOMER TO CALIFORNIA

Petitioner's "right to travel" argument has no merit as a matter of law and, in any event, is a claim petitioner has no standing to assert. First, the basis of petitioner's "right to travel" argument is that newcomers to California are treated unfairly by Article XIII A. Petition at 27-30. Even if this were true, this is not a claim petitioner has standing to assert. There is nothing in the record of this case nor in the Petition suggesting that petitioner is a newcomer to California.

"The requirement of 'actual injury redressable by the court' . . . tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982) (citations omitted).

Even if petitioner were a newcomer to California, her "right to travel" claim would still have no merit. Article XIII A does not restrict mobility. Because the *most* that a property owner will pay is a reasonable 1%, even newcomers benefit from Article XIII A. The tax rates in other

us . . . that a tax classification or disparity of tax treatment will be sustained so long as it is founded upon some reasonable distinction or rational basis." 22 Cal. 3d at 235 (emphasis in original).

states are frequently much higher. Indeed, if petitioner thinks that the 1% tax rate for newcomers is unfair, what must she think about the average property tax rate of almost 3% which existed in California prior to Article XIII A? *State Board of Equalization 1979-80 Annual Report* at 28 (the average weighted assessed rate in California for tax year 1976-77 was 2.8%).

In contending that Article XIII A impairs the right to travel, petitioner cites *Zobel v. Williams*, 457 U.S. 55 (1982); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985); and *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986). Petition at 27-30. These residency cases are inapposite. For example, this Court in *Zobel* was considering an Alaskan law which gave dividends from state mineral income to adults on the expressed basis of years of residence in the state. The goal of Alaska's dividend was solely to reward longtime state residents. The superficial similarity between living in a state and possession of a parcel of real property is insufficient to render *Zobel* relevant to California's property tax system. The distinction drawn by Article XIII A is based on the value of property when acquired, not the length of time the property is held. In *Zobel*, the dividend was found to violate equal protection because rewarding longtime residents is not a legitimate state goal. The policies of tax limitation, insuring that paper gains are not taxed, and tax certainty have nothing to do with rewarding longtime state residents.⁸

⁸ For similar reasons, *Hooper* and *Soto-Lopez* are of no help to petitioner. *Hooper* involved a property tax (continued)

CONCLUSION

Petitioner has not demonstrated why this Court should grant the petition for certiorari. The decision of the state court below in no way conflicts with any decision from this Court. Indeed, this Court stated as much in *Allegheny Pittsburgh* when it said it was not considering a case where a state knowingly, and for legitimate policy reasons, adopted an acquisition value system of property taxation. Nor has petitioner brought forth a case where there is presented an important question of federal law which should be settled by this Court. Unless this Court wishes to become a "super legislature" passing judgment on the wisdom of the tax policies of individual states, the issue presented is best dealt with by the political processes within each state. In short, Article XIII A is more than "rationally based." For this reason, petitioner's equal protection challenge cannot prevail and this Court should deny the petition for certiorari.

DATED: July, 1991.

Respectfully submitted,

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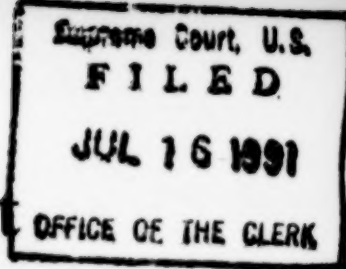
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exemption for veterans but only if they *resided* in the state prior to 1976 (472 U.S. at 614) and *Soto-Lopez* involved a civil service veteran's preference but only to veterans who were *residents* of the state at the time they entered service (476 U.S. at 900).

(5)

No. 90-1912



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PETITION FOR WRIT OF CERTIORARI
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CALIFORNIA, SECOND APPELLATE DISTRICT

**BRIEF AMICUS CURIAE
OF THE BUILDING INDUSTRY ASSOCIATION
OF SOUTHERN CALIFORNIA, INC.
IN SUPPORT OF PETITIONER**

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Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA, SECOND APPELLATE DISTRICT

**BRIEF AMICUS CURIAE
OF THE BUILDING INDUSTRY ASSOCIATION
OF SOUTHERN CALIFORNIA, INC.
IN SUPPORT OF PETITIONER**

I. CONSENT FOR FILING

Counsel for the BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. (BIA) have received written consent from counsel for Petitioner and Respondents in this case to the filing of an amicus curiae brief by the BIA. Those written consents are being forwarded to the Clerk of the Supreme Court with this Brief.

II. INTEREST OF AMICUS CURIAE

Amicus curiae BUILDING INDUSTRY ASSOCIATION OF SOUTHERN CALIFORNIA, INC. is a non-profit membership organization whose members produce the great majority of new housing in the Southern California area -- the nation's largest market for residential housing. The BIA and its members are concerned with providing new housing at affordable prices -- an increasingly difficult objective during the past decade.¹

Section 2(a) of Proposition 13 was passed in 1978 as part of an effort to protect average homeowners from the threat of escalating property taxes. The unique assessment system imposed by Section 2(a), however, produces wide variations in the amounts of property tax paid by similar parcels of real property -- favoring long-time owners and penalizing recent purchasers. Its impact is especially harsh with respect to new homeowners who generally find themselves paying five to ten (or more) times as much property tax as their stay-put neighbors.² Eliminating the discriminatory impact of Section 2(a) would, therefore, have a most beneficial effect on the affordability of new housing in California.

In addition to the direct impact of Section 2(a), taxing authorities at all levels of government have attempted to recoup their loss of revenue from Proposition 13, primarily at the expense of new homeowners and others most disadvan-

¹Today, the percentage of employed Californians who can afford the average-priced home is under 20%, and dropping. California Senate Office of Research, *California Housing: Who Can Afford the Price?* at p. 17 (1990). This article, as well as the articles and documents cited in Footnotes 17, 20, 24 and 25 and in Appendix I, are all contained in the BIA's Request for Judicial Notice of Amicus Curiae filed in this case in the California Court of Appeal.

²Similarly, new businesses are faced with large differentials in property taxes as against their established competitors.

tagged by Section 2(a). At the state level, in 1983 the Governor and the Legislature imposed the Supplemental Property Tax. California Revenue and Taxation Code §§75 et seq. This new tax imposed the higher assessments called for by Section 2(a) an average of six months sooner than was done under prior practice -- at a cost of several hundred million dollars annually to the property owners already most heavily impacted by Section 2(a).³

At the local level, many taxing agencies have imposed new developer fees which, in some areas of California, had reached the \$14,000 level for even modest homes as of 1987.⁴ For all categories of developer fees, California now leads the nation in the percentage of its communities which impose such fees.⁵ These fees are, in turn, largely passed along to the purchasers of new homes and other owners of new construction.⁶ In addition, it should be noted that developer fees are flat amounts which impact more heavily, percentagewise, on less costly homes than expensive ones, further worsening the affordability problem which is of particular concern to the BIA.

³Following the State example, the City of Los Angeles has recently imposed a new Real Property Transfer Tax imposing an estimated additional \$52 million tax burden directly on new homeowners and others acquiring property in the City. Los Angeles, CA. Ordinance No. 16976, effective July 1, 1991.

⁴See Bay Area Council, *Taxing the American Dream: Developer Fees & Housing Affordability in the Bay Area* at p. 3 (May 1988).

⁵See J. E. Frank & R. M. Rhodes, *Development Exactions* at pp. 133-44 (1987 ed.).

⁶See Appellant's (*Nordlinger's*) Responses to Brief of Amicus Curiae Building Industry of Southern California, Inc., filed in the California Court of Appeal, Second District, at pp. 1 & 2, for a more extensive discussion of the impact of Proposition 13 on developer fees.

III. SUMMARY OF ARGUMENT

The *Allegheny Pittsburgh Coal* case left open the issue of the constitutionality of Section 2(a).⁷ With the *Macy* challenge now withdrawn, this case presents an ideal opportunity to resolve that issue for both commercial and residential property alike.

The Petition for Writ of Certiorari in this case argues persuasively that the "welcome stranger" assessment procedures mandated by Section 2(a) do not meet an Equal Protection test. Property tax differentials of 1,000% and more, based solely on the date of purchase, cannot pass constitutional muster. Forcing recent purchasers to bear the entire brunt of inflation (and even to subsidize an ever-declining effective property tax rate for long-time owners)⁸ is a clear violation of the Equal Protection Clause.

⁷In this Brief, the following abbreviations are used: The *Allegheny* case refers to *Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989). The *Macy* case refers to *R. H. Macy & Co., Inc. v. Contra Costa County*, No. 90-1603. Proposition 13 was a State Constitutional Amendment, adopted in 1978, which added Art. XIII A to the California Constitution. Section references [e.g., Section 2(a)] are to Sections of Art. XIII A. The California Revenue & Taxation Code is abbreviated as R & T Code. Rule references are to the Property Tax Rules of the California State Board of Equalization in Title 18 of the California Code of Regulations. The statutory and rule citations are taken from the Property Taxes Law Guide of the California State Board of Equalization as updated through 1989. The Petition for Writ of Certiorari filed by the Petitioner in this case is referred to as the *Nordlinger* Petition. The Petition for a Writ of Certiorari filed by R. H. Macy & Co., Inc. in No. 90-1603 is referred to as the *Macy* Petition.

⁸For example, in Los Angeles County pre-1978 homeowners paid, in constant dollars, over 60% higher property taxes immediately after the passage of Proposition 13 than they do today. *Nordlinger* Brief at p. 8.

The implementation procedures instituted by the State of California have exacerbated the discriminatory impact of Section 2(a). Special interest groups have repeatedly received exemptions allowing them to receive the same favorable treatment as that accorded to the old owners under the "welcome stranger" system. The provisions for business entities are particularly complex, inconsistent and arbitrary to the point where they defy rational explanation.

In short, the implementation of Section 2(a) has compounded its intrinsic unfairness with an overlay of complex, inconsistent and arbitrary procedures that increase the discriminatory impact of the underlying "welcome stranger" system to the point where its overall unfairness is beyond any rational justification.

IV. ARGUMENT

A. INTRODUCTION

In the *Allegheny* case, this Court expressly left open the question of whether the acquisition value assessment procedure mandated by Section 2(a) of Proposition 13 is constitutional. 488 U.S. at 344, n. 4. This case squarely presents that issue which can only be resolved by this Court. Millions of California property owners have a vital interest in the prompt resolution of that question.

This Court's interest in resolving the constitutionality of Section 2(a) is indicated by the recent grant of certiorari in the *Macy* case, now withdrawn. The instant case presents a far better vehicle for the full consideration of all Section 2(a) issues without attempting, as did *Macy*, to single out for separate consideration a single type of property from the broad sweep of the Section's assessment provisions. Instead, this case presents, for a definitive resolution, the fundamental

question of the constitutionality of Section 2(a) in its entirety.⁹

Moreover, the data presented by this case -- based principally on the most recent records from the office of the Respondent Los Angeles County Assessor -- is significantly more current than was the equivalent data in *Macy*.¹⁰ Indeed, the comprehensive data presented by Petitioner in this case caused the California Court of Appeal, in the decision below, to take judicial notice of the "gross disparities" in the tax treatment of similarly situated properties and taxpayers occasioned by the operation of Section 2(a). *Nordlinger v. Lynch*, 225 Cal.App.3d 1259, 1271 (1990).

**B. PLAINTIFF'S POSITION IS PERSUASIVE:
THE "ACQUISITION VALUE" SYSTEM OF SECTION
2(A) IS INHERENTLY IN VIOLATION OF THE EQUAL
PROTECTION CLAUSE.**

BIA agrees with Petitioner's basic premise that the so-called acquisition value assessment procedure created by Section 2(a) has produced a situation in which each turn of the inflationary screw creates a new series of property owners less favored than those who purchased in the past but increasingly ahead of those who buy later.¹¹ The "acquisition

⁹It should be noted that one of the long term effects of Section 2(a), probably unintended, may be to shift a portion of the property tax burden from commercial property owners to residential property owners (because of the faster turnover rate of residential property). Brief in Opposition of Respondent Contra Costa County in the *Macy* case, at p. 24. Such differential impacts upon different types of properties can, of course, only be dealt with by a ruling covering all types of properties.

¹⁰*Nordlinger* Petition at pp. 6 & 7; *Macy* Petition at p. 4.

¹¹It should be noted, however, that Section 2(a) is not consistent in its application of the so-called acquisition value theory. Acquisition value is only applied to post-1975 buyers of real property. Earlier
(continued...)

value" procedure of Section 2(a), aptly referred to as the "welcome stranger" system, in effect requires that the new owners must bear all the tax burden of inflation. Newcomers to the home buying market, whether young people, immigrants or those previously unable to buy in the market for any other reason, are forced to pay higher taxes even though they had no opportunity to purchase at the time of the previous low assessments. In addition, military personnel, employees of companies with geographic relocation policies, widows and widowers, growing families, empty nesters, divorced persons and many other categories of people are all faced with major property tax increases when they must move for reasons beyond their control.¹² Nor is there any opportunity for the new buyers ever to reach parity with their more stationary neighbors. The Webster County Assessor made at least modest efforts at equalization. *Allegheny, supra*, 488 U.S. at 343-44. Section 2(a) has no equivalent mechanism.

The impact of Section 2(a) over the decade it has been in effect is graphically spelled out in the *Nordlinger* Petition and its accompanying exhibits. At pp. 9-15. Differentials in the taxes paid by similarly situated homeowners typically range

¹¹(...continued)

buyers all had their values brought up to the 1975 level. Moreover, Section 2(a) also departs from a true acquisition value approach in recognizing declines in value, a common occurrence for commercial fixtures, for example. The Section puts a ceiling on values, but not a floor.

¹²An equivalent occurrence in the business sector impacts the typical commercial tenant with the obligation to pay its pro rata share of any increase in the landlord's expenses, including property taxes assessed against the leased premises. The tenant's share of those taxes may skyrocket due to a change in ownership of the property of which it is not even aware. Sophisticated tenants may currently be in a position to negotiate this issue before signing new leases. However, tenants with leases in force in 1978, many of them long-term, obviously had no such opportunity.

upwards from 1000% and many extreme examples exist.¹³ Moreover, unlike the situation in the *Allegheny* case, the lack of any equalizing mechanism in Section 2(a) insures that these differentials will continue to get worse as long as inflation continues. The records in both this case and the previously filed *Macy* case indicate that if current trends continue, differentials of over 2,000% will be common before the end of this decade.¹⁴ A system that routinely and necessarily produces such results can hardly be said to square with the Equal Protection Clause.¹⁵

Finally, Section 2(a) raises, with elemental clarity, the basic issue of whether a 1978 voter majority can impose a constitutional property tax system that permanently shifts an ever increasing share of the property tax burden to future purchasers. This fundamental point was cogently stated by the National Taxpayers Union in its amicus brief in the *Allegheny* case as follows:

The current owners, who are favorably treated, are currently within the taxing authority and able to participate in the democratic processes that control allocation of the tax burden. The

¹³In this connection, it should be noted that in the study done by the Petitioner, the higher differentials between long-time homeowners and recent buyers tended to be concentrated in the more affluent neighborhoods with the lower differentials occurring most in the more modest neighborhoods, such as the Petitioner's. *Nordlinger* Petition pp. 14 & 15. Thus the wealthier homeowners tended to receive greater benefits under Proposition 13, both absolutely and percentage-wise.

¹⁴See *Nordlinger* Petition at p. 14 and *Macy* Petition at p. 4.

¹⁵A comparison might be made to a recent land use case, *Nollan v. State Coastal Commission*, in which this Court indicated that the Equal Protection Clause prohibits public agencies from forcing some people to bear costs which should, in all fairness, be borne by the public as a whole. 483 U.S. 825, 835, n. 4 (1987).

group who suffers discrimination are likely to be excluded from political participation in the local taxing authority when the rule is established. In short, reassessing only new purchases pleases the voters at the expense of non-voters (or at least a minority of voters). (At p. 12. Also see the *Macy* Petition at p. 22.)¹⁶

The NTU brief also characterized the danger thus posed to the California property tax system in the following language:

The "welcome stranger" method is an unconstitutionally discriminatory vehicle for allocating tax liability, even when the divergence is not extreme. The defect in the reassessment on sale approach is that it consistently biases political decisionmaking. When some taxpayers bear a heavier portion of the community's tax burden than others, the

¹⁶It should be noted that the revolving door favoritism of Section 2(a) is unlikely ever to be changed by the Legislature or the voters because only a minority of property owners, many of them recent first-time buyers, suffer the maximum discriminatory impact at any one time. See *Nordlinger* Petition at pp. 19 & 20, and also *Macy* Petition at p. 10.

An analogy might be made to the voting rights cases. Earlier decisions of this Court, such as *Colegrove v. Green*, 328 U.S. 549 (1946), upheld the right of local and state legislators to ignore demographic changes and continue the use of highly discriminatory voting apportionments. Eventually, however, in cases beginning with *Baker v. Carr*, 369 U.S. 186 (1962), this Court held that the intrinsic unfairness of using historic boundaries to control present-day voting rights had to give way. Just as this Court refused to allow a particular voter majority to perpetuate its political power, so in this case it should not permit a 1978 voter majority to impose a tax system that permanently fixes the vast majority of the tax burden on others.

benefitted taxpayers have an incentive to support higher tax rates and greater governmental expenditures. They do not bear their full proportional burden; they can free ride at others' expense. (At p. 3.)

**C. EXACERBATION IN PRACTICE:
LATER AMENDMENTS TO PROPOSITION 13,
IMPLEMENTING STATUTES AND REGULATIONS,
AND LOCAL ADMINISTRATIVE PROCEDURES HAVE
MAGNIFIED THE DISCRIMINATORY IMPACT OF
SECTION 2(A).**

(1) INTRODUCTION

It might be supposed that the implementation and interpretation of Section 2(a) would have had the purpose and effect of minimizing its discriminatory impact as summarized above. The exact opposite has been the case. The discriminatory effect of Section 2(a) has been repeatedly increased by many of the legislative and administrative actions taken in putting the Section into effect. Its harsh impact has been wholly or partially eliminated for a variety of favored groups leaving those new buyers and builders not so favored to bear an ever-increasing share of the property tax burden.

**(2) INEQUALITIES ABOUND IN THE
TREATMENT OF BOTH INDIVIDUAL AND BUSINESS
PROPERTIES**

As originally enacted in 1978, Section 2(a) provided an apparently very simple scheme for the assessment of real property in California. All values were to be rolled back to the 1975 level and remain there (with a maximum 2% annual inflation adjustment) until a "change in ownership" or "new construction" occurred. A change in ownership or new construction triggered a reappraisal (and corresponding new assessment) up to current fair market value. Whatever hope

the authors of Proposition 13, or those who voted for it in 1978, may have had that the procedures under Section 2(a) would remain simple and fair have long since been dashed. Today's implementing provisions are complex and discriminatory with respect to both property held by individuals and the corporate and partnership holdings of business property.¹⁷

**(a) Family and Group Transfers:
Discrimination Compounded**

Transfers within the immediate family have largely been exempted from the change-in-ownership requirements. Parents may transfer their residences and up to \$2,000,000 in assessed value (not current fair market value which may be far higher) of other property to their children without reappraisal (and vice versa).¹⁸ In effect, family homes and family farms (or other equivalent land-owning businesses) can be held in perpetuity without reappraisal.¹⁹

Another available mechanism for avoiding reappraisal of property to be transferred among less closely related group members is joint tenancy. A transfer of property to one or more joint tenants is a change in ownership and triggers reappraisal. However, if one of the new joint tenants is a

¹⁷Many of these provisions are, themselves, of doubtful constitutionality. See Morris, *Proposition 13, Change in Ownership, Constitutional Problems*, Los Angeles Lawyer, at pp. 11, 49-50 (Oct. 1981); Ehrman & Flavin, *Taxing California Property*, §2:11 (1988).

¹⁸Section 2(g). (Added to Proposition 13 by Proposition 58 in 1986.) Each parent and child has a \$1,000,000 exemption. Transfers between spouses are also totally exempt. Section 2(g); R & T Code §63.

¹⁹The \$1,000,000 exemption is not, moreover, limited to family business assets. It applies equally to investment property or any other real estate which may be transferred between parents and children. Macy's counsel characterized these provisions as amounting to the creation of a "landed gentry." Macy Petition at p. 11, n. 13.

grantor, there is no reappraisal. R & T Code §65(b). Moreover, the new joint tenants may transfer among themselves without reappraisal as long as the original grantor retains at least part of her/his interest. R & T Code §65(d). Through the use of this device, family (or other group) members can postpone reappraisal for long periods simply by having one or more youthful individuals retain minor interests through a long period of joint tenancy transfers.

Other, if less far reaching, examples of discriminatory constitutional, statutory and regulatory provisions abound.²⁰

(b) Transfers Involving Legal Entities: In Addition, Complexity and Arbitrariness

The assessment procedures for transfers of real property held by individuals and legal entities for commercial and industrial purposes is, of course, also grounded on the

²⁰See Appendix I, *infra*. Also, it must be remembered that California's property tax system is controlled operationally by 58 County Assessors each of whom is an independent locally-elected official whose budget is set by a locally-elected Board of Supervisors. It is hardly surprising that the same tendency to allow certain favored groups to avoid the harsh reappraisal requirements of Section 2(a) operates at the local level just as it does in Sacramento. For example, in San Diego County the Board of Supervisors refused to provide the Assessor with the funds necessary to equalize the 1978 assessment roll at the 1975 level as required by Section 2(a). The result was that 75% of the homes in San Diego County remained on the 1978 roll (and succeeding rolls) at 1972, 1973 and 1974 values (providing an annual savings to those homeowners of \$20,000,000). State Board of Equalization Assessment Practices Survey of San Diego County at pp. 2, 8 & 9 (1980-81). As commented by the Board staff: "The result is that all of the taxpayers of the State of California must contribute to the San Diego County tax deficiency in the form of 'bail out' monies in order for the County to meet its total fiscal responsibilities." at p. 2. Such practices were not unique to San Diego County. See Joint Legislative Audit Committee (Office of the Auditor General), *Post-Proposition 13 Tax Assessment Practices of the Counties in the State of California* at pp. 1-3 (1979).

"welcome stranger" approach -- favoring old established businesses as against their more newly established competitors. Again, numerous special interest exemptions have been added.²¹

The real nadir of the Section 2(a) implementation scheme for business property, however, occurs with respect to the arbitrary and complex treatment of corporations and other legal entities. That treatment is based on two inconsistent theories. Some California Revenue and Taxation Code sections treat the entities as the owners of real property for change-in-ownership purposes (entity theory) and others treat their stockholders, partners and beneficiaries as the owners for such purposes (ultimate owner theory).²² The result is a set of inconsistent and arbitrary rules which are a trap for the unwary [as well as an opportunity for the sophisticated to use to their special advantage in attempting to avoid the requirements of Section 2(a)].²³

The vagaries of the current system are extreme. For example, where property is acquired by the acquisition of stock (or other ownership interests) in the entity holding title to the property, only the acquisition of over 50% of the stock by a single individual or entity triggers reappraisal.²⁴ A group

²¹See Appendix I, *infra*.

²²See Ehrman & Flavin, *op. cit.*, §2:15.

²³In *Shuwa Investments Corporation v. County of Los Angeles*, (Los Angeles County Superior Court No. 726-006, now on appeal in the California Court of Appeal, Second District, No. B-056571) only the application of a "step transaction" doctrine prevented the new owner of the Arco Tower in Los Angeles from avoiding full reappraisal after acquisition of that property. (The new owner proceeded in apparent full compliance with the existing change-in-ownership provisions.)

²⁴R & T Code §64(c). See Rule 462(j), Pope & Ajalat, *Proposition 13 Section 2(a)*, 54 Cal.St.Bar J. 494, 497-98 (1979), and Steele, *Proposition 13's "Change in Ownership": When May Property be* (continued...)

purchase such as an LBO, however, does not trigger reappraisal as long as no individual in the group owns over 50% of the acquired corporation.²⁵ Legal entities owning real property may, therefore, enter into an endless chain of under-50% transfers without triggering reappraisal.

At the other extreme are transactions where a tiny change in stock ownership triggers reappraisal of all the real estate held by the corporation involved. In a corporate reorganization, for example, a 1% difference in the stock holdings before and after the reorganization will trigger reappraisal of 100% of the real property held by the reorganized corporation.²⁶ Similarly, transfers of real property in and out of legal entities are not treated as changes in ownership if the property and the entity are owned in exactly the same proportions. However, under Rule 462(j)(2)(B)(ii), the slightest variation in those proportions will trigger a 100% reappraisal. Equally capricious is the related rule that if 50-50 owners of a single parcel transfer that parcel to an entity, there is no change-in-ownership reappraisal; but if two owners of parcels of equal value transfer them to an entity, both parcels must be 100% reappraised. Rule 462(j)(2)(B)(iii).

²⁴(...continued)

Reassessed under Article XIII A of the California Constitution?, part of a Workshop on *Ad Valorem* Property and Transfer Taxes as Applied to Real Estate Transactions, Real Property and Taxation Section of the State Bar of California at pp. 14-24 & 33-39 (June 8, 1989).

²⁵A State Board of Equalization staff letter has even opined that there is no change in ownership where a husband and wife each purchase 50% of the shares of a corporation (Letters to County Assessors dated July 15, 1983 and March 5, 1985) -- despite the fact that husband and wife are treated as an entity for the purpose of transfers between them. (See Footnote 18, *supra*.)

²⁶R & T Code §62(a); Rule 462(j).

(c) New Construction: Again, Maximum Advantage For Old Owners Plus Arbitrary Distinctions

By its plain terms, the treatment of new construction under Section 2(a) is a fundamental element of its discriminatory impact. All new construction is assessed at current fair market value. The purchaser (or builder) of a new home (or business building) is assessed at today's values. Their neighbors (or competitors) are assessed at historical, acquisition date values.

As with changes in ownership, the concept of new construction has been elaborated and interpreted in a manner favoring existing property owners. The Legislature narrowly defined new construction to include only the new portion of the property (e.g., land retains its old value when a building is constructed on it; and where new construction is done on an existing structure, only the value of the new portion is added to the assessment roll).²⁷ With respect to remodeling and renovation, only alterations that change the use of the property or improve it to the point of being substantially the equivalent of new are added to the roll -- everything else is considered "maintenance" and is not assessed.²⁸

The difficulty of applying amorphous concepts, such as those contained in the preceding paragraph, to a complex commercial society has frequently produced complex and arbitrary applications of the relevant rules, often varying markedly from county to county. As basic a concept as the "date of completion" for multi-year construction projects [the date of reappraisal under Section 2(a)], for example, went

²⁷R & T Code §71; Rule 463(a).

²⁸R & T Code §70; Rule 463(b).

through years of litigation before being resolved by the Court of Appeal.²⁹

V. CONCLUSION

The high level of California property taxes in 1978 was a volatile issue of the first magnitude. Homeowners, in particular, were up in arms as the Legislature procrastinated in providing relief despite the presence of a mammoth State surplus. Howard Jarvis and Paul Gann rode to the rescue with Proposition 13 -- their motel room-drafted home remedy -- which was approved overwhelmingly by the voters in the June election.

The enthusiasm generated by Proposition 13 swept the nation and became the "tax revolt" of the 1980's.³⁰ Many aspects of the Proposition were imitated around the country. The principal exception has been Section 2(a) which was, and is, unique to California.

Thus, Section 2(a) has been, and remains, aberrational. The Section drew the only dissent in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208 (1978), the case approving the constitutionality of Proposition 13 at the State level. Even the majority opinion in that case sustained Section 2(a) against a facial attack with the comment that the acquisition value "system may operate on a fairer basis" and that its justification is "arguably reasonable." 22 Cal.3d at 235 (emphasis added). The Court

²⁹The result is a complex definition that normally produces multiple dates of valuation within a single high-rise office building or similar project. *Pope v. State Board of Equalization*, 146 Cal.App.3d 1132 (1983).

³⁰In California itself, the voters adopted the so-called "Gann Limit" establishing a ceiling on expenditures by State and local government based on the post-Proposition 13 spending level of 1979. California Constitution, Article XIII B (adopted in November 1979).

of Appeal in the instant case, looking at ten years of experience under Section 2(a), specifically found that the disparities created under Section 2(a) were "gross," but felt bound to affirm because of the binding effect of *Amador*. 225 Cal.App.3d at pp. 1271, 1275. The California State Senate, in response to this litigation, appointed the State Senate Commission on Property Tax Equity and Revenue which has recommended a return to an equalized system (in the event that Section 2(a) is held to be unconstitutional in this litigation).³¹

These judicial and legislative reservations are sound. The evidence presented in this case is overwhelming. The "welcome stranger" system does not operate on a "fairer basis;" it has no "reasonable" justification and its current impact is certainly "gross," especially as exacerbated by the complex, inconsistent and frequently arbitrary implementation provisions currently in effect. The system is, in fact, no more and no less than a so far successful effort by old owners to shift the bulk of their property tax burden to future purchasers. The courts would not permit this shift to be done directly, and it should not be permitted in the fancy-dress guise of Section 2(a).

³¹Report of the Senate Commission on Property Tax Equity and Revenue, at p. 4 (1991).

A hearing should be granted in this case and Section 2(a) held to be incompatible with the requirements of the Equal Protection Clause.

Respectfully submitted,

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APPENDIX

APPENDIX I

SELECTED SECTION 2(a) EXEMPTIONS

(Pursuant to Sec. 2(a); R & T Code §§60-69; Rule 462)

A. FAMILY TRANSFERS

- (1) Spouse/Exemption: No reappraisal of transfers between spouses. (Section 2(g); R & T Code §63)

This exemption is applied to transfers in accordance with Property Settlement Agreements, even those made pursuant to post-divorce amendments to such agreements. [Rule 462(1)(3)]

- (2) Parent-Child Exemption: No reappraisal of parent/child transfers of family homes or parent/child transfers of other property up to \$1,000,000 (assessed value). [Section 2(g)]

- (3) Couples Living Together Exemption: No reappraisal of transfers prior to 1981. Thereafter such transfers trigger reappraisal. [R & T Code §62(j)]

B. JOINT TENANCY TRANSFERS

- (1) Grantor Exemptions: No reappraisal of transfers into joint tenancy where a grantor retains any interest in the transferred property. [R & T Code §65(b)]

- (2) Transfers Among Tenants Exemption: No reappraisal of transfers between joint tenants as long as an original grantor retains any interest in the property. [R & T Code §65(d)]

C. HOMEOWNER TRANSFERS

- (1) Age 55 and Over Exemption: Homeowners aged 55 and over may transfer existing assessments to new homes under specified conditions. (Section 2(a); R & T Code §69.5)
- (2) Leased Home Exemption: No reappraisal of leased homes transferred by the owner-landlord. [R & T Code §62(g)]
- (3) Co-op Apartment Exemption: No reappraisal of the transfer of certain publicly-subsidized co-op apartment units. [R & T Code §62(i)]

D. TRANSFERS OF INTERESTS IN LEGAL ENTITIES OWNING REAL PROPERTY

- (1) Single Purchaser of Over-50% Interest Reappraisal: The purchase by a single purchaser of over 50% of the stock of a corporation (or other business entity) triggers the reappraisal of the real property held by that corporation. [R & T Code §64(c)]

- (2) Under 50% Exemption: Virtually all purchases of 50% or less of the stock of a corporation do not trigger reappraisal of the corporation's real property. [R & T Code §64(a)]³²
- (3) Group Purchase Exemption: LBOs and other group purchases of the stock of a corporation do not trigger reappraisal of the corporation's real property. [R & T Code §64(c)]

E. MISCELLANEOUS

- (1) Employee Benefit Plans: No reappraisal of most employee benefit plan transactions. (R & T Code §66)
- (2) Investment Funds: No reappraisal of purchase of or transfers of the shares of collective investment funds of financial institutions. [R & T Code §62(i)]
- (3) De Minimis Interests: Annual transfers of undivided interests of 5% or less and valued at \$10,000 or less do not trigger reappraisal. [R & T Code §65.1(a)]

For a more complete listing of the entire spectrum of change-in-ownership provisions as they existed in 1981 see the chart in Pope, *Proposition 13 Change in Ownership: An Administrative Nightmare*, Los Angeles Lawyer (Vol. 4, No. 7), at pp. 40-41 (October 1981).

³²For a limited exception to this rule see R & T Code §64(d).

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No. 90-1912

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax
Assessor for Los Angeles County and the
COUNTY OF LOS ANGELES,

Respondents.

**On Petition for Writ of Certiorari to
To The Court Of Appeal
Of The State Of California**

**MOTION OF THE LEAGUE OF WOMEN VOTERS OF
CALIFORNIA FOR LEAVE TO FILE BRIEF AS AMICUS
CURIAE IN SUPPORT OF PETITIONER AND BRIEF OF
THE LEAGUE OF WOMEN VOTERS OF CALIFORNIA
AS AMICUS CURIAE IN SUPPORT OF PETITIONER**

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**MOTION FOR LEAVE TO FILE
BRIEF AS AMICUS CURIAE**

The League of Women Voters of California (the "League") respectfully moves for leave to file the attached brief as *amicus curiae* in this case. Petitioner's attorneys have consented to the filing of this brief, and a copy of the consent has been filed with the Court. The consent of the attorneys for the respondents was requested, but refused.

The League is a nonprofit, nonpartisan organization open to all men and women. Since 1920, the League has dedicated itself to the goal of achieving fair and equal treatment for all people. The League has been closely involved with the many issues surrounding Proposition 13, the subject matter of this case, since 1977. The League brings to bear on the subject the unique perspective of a broad-based organization with expertise in the area of government institutions and the political process.

Without burdening the Court, the League seeks to raise issues not yet clearly developed by the parties or by other *amici*. First, the League believes that unless the Court grants certiorari *in this case*, the issue may go without resolution for a substantial length of time because of political pressures that prevent a voter solution, a legislative resolution, and, to some extent, a judicial remedy. Second, the League wishes to bring to the Court's attention additional factual information that became available after the filing of the Petition for Writ of Certiorari in this matter, and that might otherwise not be brought to the Court's attention. If the League's points are not allowed to be expressed at this stage of the proceeding, fundamental issues of great importance to the

League, its members, and millions of property owners in California might be decided without a proper discussion of the issues.

For these reasons, the League requests leave to file this brief as *amicus curiae* on behalf of petitioner and in support of the granting of certiorari in this case.

Respectfully submitted,

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I.

STATEMENT OF INTEREST AND
SUMMARY OF ARGUMENT

This case involves a challenge to the validity of Section 2(a) of California's Proposition 13. Its outcome will have a very real impact on millions of Californians.¹ The League of Women Voters of California (the "League") seeks to bring two matters not fully raised by the parties herein to the attention of the Court: (1) the fact that judicial redress from this Court in this case is the only realistic remedy for the gross inequities created by Proposition 13; and (2) the very recent findings of the California Senate Commission on Property Tax Equity and Revenue regarding these inequities.

A. Statement of Interest.

The League is a nonprofit, nonpartisan organization open to all women and men. Since 1920, the League has promoted informed and active citizen participation in government. A multi-issue organization, the League's voice has been heard on a full slate of issues, including voting rights, education, housing, child care, and campaign and initiative reform. Throughout the years, the League has worked as a "political watch

¹ Proposition 13 was a State Constitutional Amendment, adopted in 1978 through the so-called "Jarvis-Gann" initiative, which added Art. XIII A to the California Constitution. The operation of Proposition 13 has been set forth in detail by petitioner and will not be repeated herein. See *Nordlinger* Petition, *passim*. Like petitioner, the League does not challenge the right of the people to limit the level of taxation imposed by a state—the principal objective of Proposition 13. Rather, like petitioner, the League argues that Section 2(a) unconstitutionally allocates this tax burden among taxpayers.

dog" towards a single goal: fair and equal treatment for all people.

In the spring of 1977, the League took part in a comprehensive study of assessment practices and the role of property taxes. The resulting consensus was that property taxes should be broad-based, equitably allocated, and uniformly applied so that all property owners bear their fair share of the burden. Because Proposition 13 undermines these ideals, the League campaigned against it when it appeared on the June 1978 ballot. The League was unsuccessful, and what it feared became a reality: similarly situated taxpayers are being taxed at grossly different rates. Although not a politically popular position, the League today, as it did thirteen years ago, seeks to eliminate the unfair and inequitable aspects of Proposition 13.

B. Summary of Argument.

Although born out of a "taxpayer revolt" in 1978 to reduce the amount of what were perceived to be unfair property taxes imposed on property owners, there is no doubt today that Proposition 13 has created a very unfair and inequitable system of taxation. There is nothing fair or equitable in requiring a new property owner to pay 10, 15, 17, and even 583 times more property taxes than his or her neighbors solely because the neighbors have owned their property for a longer period of time. Indeed, already burdened by higher mortgage costs, as well as ever-increasing development fees imposed by local governments, these newcomers are the least able to carry this disproportionate tax load. In light of these injustices, and with all deference to the Court and its heavy workload, the League seeks to bring two important points

before the Court that otherwise might not be fully briefed.

First, the political realities are such that unless the Court grants certiorari in this case, the issue may go unresolved for a long time. At any given time, there will always be a majority of property owners who will gain, today or in the future, from shifting an unfair portion of the tax burden to relative newcomers. Thus, a political solution is not practical. Further, since Proposition 13 is an amendment to California's Constitution, a legislative solution is highly unlikely without a Court declaration that Section 2(a) is unconstitutional. Obtaining a judicial resolution is also difficult, as shown by the previous withdrawal of the case before this Court that raised these issues. See *R.H. Macy & Co., Inc. v. Contra Costa County*, (No. 90-1603). Petitioner has exhausted her appeals in the California Courts, making this case ripe for review.²

Second, so obvious are the disparities in treatment caused by Proposition 13, that the California Senate Commission on Property Tax Equity and Revenue very recently recommended both the elimination of

² See *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259, 275 Cal. Rptr. 684 (1990) (denying petitioner's challenge). Petitioner *Nordlinger* petitioned the State Supreme Court for review of the court of appeal decision, and that petition was denied on February 28, 1991. While the California appellate court recognized that there is no practicable political remedy for this form of discrimination, which inherently advantages the majority of present voters over the voters of the future, it nonetheless rejected petitioner's challenge to this discrimination. See *Nordlinger v. Lynch*, 225 Cal. App. 3d at 1282 n.11 ("It is questionable, however, whether a majority of the electorate ever will be sufficiently aggrieved to repeal Article XIII A's acquisition value assessment method").

the "substantial inequities" created by Proposition 13 and certain alternatives to Proposition 13's discriminatory effects in the event this Court declares the law unconstitutional.³ In this Brief, the League will highlight certain portions of this Senate Report, a report that both finds Proposition 13 to be unfair and inequitable and lays the foundation for the creation of a more equitable system of property taxation. Thus, should this Court accept certiorari and strike down Section 2(a) of Proposition 13, the Senate Report makes it clear that many alternatives to these inequitable methods of taxation exist and that the Senate stands ready to attempt to implement a fair, equitable, and constitutionally acceptable method of property taxation in California.

³ In June of 1991, the Commission issued its report, finding that Proposition 13 "has generated *substantial inequities* for property taxpayers," "does not correct or equalize" these inequities, and "offend[s] a policy of equal taxation." *Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate, passim* (June 1991) (the "Senate Report") (emphasis added). The Senate Report thereafter sets forth its recommendations for the creation of a fair and equitable system of taxation. *Id.* A copy of the Senate Report has been lodged with the Clerk of the Court. In Resolution 42, wherein the Senate created the Commission, the Senate noted that: "Immediately upon the passage of Proposition 13, disparities were recognized in the treatment of homeowners and commercial property owners in similar situations who had purchased homes at different time periods and . . . this disparity has increased over time and . . . California's system of tax assessments may result in property tax payments which fall heavily upon young families, many of whom already have difficulty in purchasing the median priced California home." Senate Report, Appendix A.

II.

ARGUMENT

Originally enacted to reduce a perceived unfairness in California's property tax system, Proposition 13 has itself created a grossly unfair and inequitable system of taxation in California. Under this system, those who have owned property since 1975 have escaped their fair share of the State's tax burden while those who later purchased property have been forced to subsidize the former group on an ever-increasing scale. Fairness and equity have vanished and, absent action by this Court, will likely not return for some time.

A. THE POLITICAL AND LEGISLATIVE PROCESS WILL NOT ELIMINATE THE INEQUITIES OF PROPOSITION 13, AND THE JUDICIAL PROCESS OFFERS ONLY A LIMITED REMEDY.

This case offers a unique opportunity for the Court to resolve the inequities caused by Proposition 13. In fact, there are no other meaningful remedies available because of the unusual political issues surrounding Proposition 13. There is little or no likelihood of a political solution to the inequalities caused by Proposition 13. While a substantial number of people are aggrieved at any one time, these newcomers to the property tax system are a minority when compared with the more favorably treated people who have owned their properties for some time. In addition, the newcomers foresee the time when they will become a more favorably treated class, at least with respect to those who enter the system at a later time. Thus, Proposition 13 insidiously offers to every tax-

payer an incentive to keep what is otherwise recognized to be an unfair system.⁴

Legislative reform is also problematic. Proposition 13 is a part of the California Constitution. Even if the members of the Legislature were willing to challenge the voters who see personal benefits in keeping an admittedly unfair system, arguably an act equivalent to political suicide, they are powerless to do so absent a constitutional amendment (an unlikely event at best).

Finally, it is very difficult to obtain judicial relief. A challenger must first be prepared to exhaust the state court system in California, as the petitioner has done in this case. But even then, the challenger must be prepared to stand up to the enormous pressure that can be brought to bear on the poor soul who dares to threaten those who are receiving benefits under Proposition 13 at the expense of others. So powerful is such pressure that the challenger who first brought this matter before the Court quickly succumbed and withdrew its apparently successful lawsuit when threatened with a boycott of its stores.

⁴ The Senate Report recognizes this problem:

Property tax equity, like beauty, is in the eyes of the beholder, that is, the beholder of his or her tax bill. Generally speaking, property taxpayers in California think Article XIII A of the California Constitution (Proposition 13) with its constitutionally guaranteed low tax rate and capped annual assessment is lovely indeed, albeit unfair.

Senate Report, at 2. For this reason, the Report found "many taxpayers are lulled into accepting an inequitable tax structure." *Id.*

See R.H. Macy & Co., Inc. v. Contra Costa County, (No. 90-1603)(Petition dismissed June 23, 1991) (1991 U.S. Lexis 4040).⁵ Only a very special and tough challenger can pursue these issues all the way to (and through) this Court. Fortunately, such a challenger is before the Court now, and this opportunity should not be lost.

B. THE RECENT REPORT OF THE CALIFORNIA SENATE COMMISSION ON PROPERTY TAX EQUITY AND REVENUE PROVIDES FACTUAL MATTERS OF IMPORTANCE TO THE COURT.

After the Petition for a Writ of Certiorari was filed in this case, the California Senate Commission on Property Tax Equity and Revenue issued a special report.⁶ The League wishes to bring to the Court's attention important matters disclosed in that report that otherwise would not be before the Court. The

⁵ As noted in the press: "Macy's came in for a ton of criticism from the business community, which on the whole gets a big tax break from Proposition 13, and from homeowners, who threatened to boycott Macy's stores. Last Friday the retailer withdrew its case. Proposition 13 was bigger than Macy's." *Los Angeles Times*, June 12, 1991, at B6, col. 3. Petitioner *Nordlinger*, an individual, is not subject to this pressure. Moreover, unlike *Macy's* petition, which presented for review a tax differential of only 2.5:1 for similarly situated properties, petitioner *Nordlinger* has cited examples of tax disparities as high as 583:1. *See Nordlinger* Petition, at 20-21. Also unlike *Macy's* Petition, petitioner *Nordlinger* does not attempt to distinguish between different kinds of property as Proposition 13 makes no such distinction. Thus, unlike *Macy's* Petition, the *Nordlinger* case raises the unfair impact of Proposition 13 on millions of residential homeowners, residential income producing property owners, and commercial owners.

⁶ *See* footnote 3, *supra*.

following is a summary of some of the more important findings of the Senate Commission.

1. Property taxes were first imposed in California in 1850 and, in 1977 (the year before Proposition 13), property taxes accounted for 40 percent of local revenues in the State.⁷ Senate Report, at 17. Over the years, property taxes were the mainstay of local government, yielding \$11.5 billion for schools and local governments in 1977-78 alone. *Id.* at 21.

2. In the decade before Proposition 13, property tax levies grew at a rapid pace—averaging 11.5 percent a year from 1967-72. Senate Report, at 23. The increases created a large group of irate property owners who received tax bills that were double or even triple those from previous years. The problem was not just that assessments were rising faster than inflation, but that local governments failed to lower property tax rates in response to these increases—a situation that resulted in huge revenue windfalls. At the same time, the State projected a record breaking General Fund surplus for fiscal 1977-78. *Id.* at 25.

3. To attempt to address this situation and reduce the tax burden on California citizens, several tax relief bills were introduced in the 1977 Legislative Session, all of which failed. *Id.* A “voter’s revolt” initiative, Proposition 13, was then placed on the June 1978 ballot as a proposed solution. Although the League campaigned against it, Proposition 13 was ap-

⁷ Senate Report, at 17. Then, as now, the California Constitution required that all property within the state “be taxed in proportion to its value.” Cal. Const. Art. 13, § 1. “Cultivated and uncultivated land, of the same quality, and similarly situated, shall be assessed at the same value.” Cal. Const. Art. 13, § 2.

proved by the voters and became Article XIII A of the California Constitution.⁸

4. It is undeniable that Proposition 13 has created great disparity in the levels of taxation between similarly situated taxpayers.⁹ A sampling of owner-occupied homes on the 1988 assessment rolls by the State Board of Equalization indicated that about 2 million homes had a 1975 acquisition base year. Senate Report, at 33. Owners of these homes paid only 25 percent of the property tax—about \$1.05 billion in taxes in 1988-89. The remaining 2.5 million homeowners paid 75 percent of the property tax—\$3.15 billion in taxes. *Id.* Thus, after only thirteen years of Proposition 13’s operation, long-time homeowners already carry roughly one-quarter of the tax load while the other half, the state’s new homeowners, bear

⁸ Like petitioner, the League does not challenge the right of the people to enact legislation via an initiative. However, laws enacted directly by the people, like any other, are subject to constitutional scrutiny. As stated by this Court in *Lucas v. Colorado General Assembly*, 377 U.S. 713 (1964): “A citizen’s constitutional rights can hardly be infringed simply because a majority of the people choose that it be. We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause. . . .” *Id.* at 736-37.

⁹ The studies conducted by petitioner demonstrate multiple examples of the wide disparity of taxes paid by long-time property owners versus recent owners. *Nordlinger* Petition, at 14-15. The studies also show that wealthier homeowners tend to receive the greatest benefits under Proposition 13, both absolutely and percentage wise. *Id.* As the records in both this case and the *Macy* case indicate, differentials of over 2,000% will be common before the end of this decade if current trends continue. See *Nordlinger* Petition, at 14; *Macy* Petition, at 4.

nearly three-quarters of the load. *Id.* This disparity will only continue to increase in future years.¹⁰

5. The immediate effect of Proposition 13 on California taxpayers was a substantial reduction of their property tax bills. Senate Report, at 26; *Nordlinger* Petition, at 8. The immediate effect of Proposition 13 on local governments was a dramatic loss of revenue. In the fiscal year following the enactment of Proposition 13, local governments faced revenue losses of approximately \$7 billion—an amount equal to 57 percent of property tax revenues and 22 percent of local revenues from all sources. Senate Report, at 28. As a result, the Legislature was forced to adopt a “massive emergency fiscal assistance plan for local governments.” *Id.* This “bail out” was available only because of the large surplus accumulated in the General Fund. That surplus soon dwindled, and for the fiscal year 1991-92 the State faced a \$14 billion deficit. *Id.*, at 3.

6. The results of this loss of revenue are two-fold: (1) California’s infrastructure is deteriorating and becoming more inadequate with the passage of every day (*id.*, at 47); and (2) the burden of attempting to address these inadequacies is increasingly being placed on newcomers (*id.*, *passim*). Moreover, faced with a cap on taxation rates, local governments are continually looking for new ways to raise additional revenue, often at the expense of the newcomer. For

¹⁰ The unfairly discriminatory effects of Section 2(a) have been magnified by legislative and administrative actions. See the *Amicus Curiae* brief of The Building Industry Association of Southern California, Inc. in support of petitioner, at 11-17, for a discussion of these inequities.

example, since the passage of Proposition 13, “the widespread increase in developer fees (estimated now at \$3 billion annually) has been used by local governments as a source of local revenue.”¹¹ These fees, of course, are paid solely by newcomers.

7. The situation is equally dire for the new business owner. Like the homeowner, the business owner must pay a much higher price for his or her property than his or her long-standing competitor, he or she may be required to pay huge developer fees, and he or she must bear a vastly higher property tax payment than his or her long-standing competitor. The new business owner must then either pass the higher taxes on to his or her customer (and hence charge more than his or her long-time competitor) or reduce any profits he or she would otherwise realize. Neither outcome is a welcome result.

8. All of these burdens, of course, fall on those least able to bear this burden—the newcomers. The newcomers will pay the highest price for a house or business in the neighborhood (and thus a higher mortgage payment), pay the passed-on costs of substantial developer fees, and then, on top of all of this, pay 10, 15, 17, or even 583 times the property taxes of his or her neighbor. The newcomers, whether young people, immigrants, military personnel, or relocated

¹¹ Senate Report, at 48. In some areas, developer fees have reached \$14,000.00 for even modest homes. See Bay Area Council, *Taxing the American Dream: Developer Fees & Housing Affordability in the Bay Area*, at 3 (1988). These fiscal constraints not only suggest that local officials are more likely to approve developments that are high revenue generators, but that, when homes are built, the price of these few homes is greatly increased. See Senate Report, at 48.

employees, must carry this burden even though they never had the opportunity to purchase a home or business at the time of the previous low assessment, will never have the opportunity to join the class of low assessment taxpayers, and will never have their tax payments equalized over time with the taxes of the low assessment group.

As this Court has noted, permitting "states to divide citizens into expanding numbers of permanent classes . . . could produce nothing but discord and mutual irritation." *Zobel v. Williams*, 457 U.S. 55, 64 & n.12 (1982). This is a good description of the situation today in California, and there could scarcely be a clearer example of legislation which, without any justification other than "I got here first," discriminates between similarly situated citizens. Such a law will not stand up to constitutional scrutiny,¹² and this

¹² This result would be consistent with *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989), wherein this Court unanimously held that for a state to tax owners of recently acquired properties at fair market value while taxing "neighboring comparable property which has not been recently sold . . . at only a minor fraction of that figure" violated the Equal Protection Clause. *Id.* at 342. To pass constitutional scrutiny, "the seasonal attainment of a rough equity in tax treatment of similarly situated property owners" was required. *Id.*, at 343. Review is thus proper under Sup. Ct. R. 10.1(c). This case, much more than *Allegheny*, however, is of great national importance. California has committed itself through its State Constitution to a method of taxation that is inherently discriminatory against newcomers. Unless Section 2(a) is reviewed and overturned by this Court, there will be a massive, systematic, multi-billion-dollar redistribution of wealth from some owners of California property to others, growing continuously more severe, based on no discernible principle of justice, efficiency, or tax equity. Also, and although not raised by petitioner, the League believes that

Court should subject Proposition 13 to such an examination.

III.

CONCLUSION

It is undeniable that Proposition 13 has created a grossly unfair and inequitable system of taxation in California. Unfortunately, the political reality of Proposition 13 is that neither the voters nor the Legislature or, for that matter, even the State courts, will provide a remedy for this system of taxation. It is precisely this situation which warrants the attention of this Court. This Court has held that "rough equality," not artificial distinctions, such as duration of residency, must be utilized by a State when it places different burdens on similarly situated citizens. This Court is being asked to require the State of California to do the same here—no more, no less. It is therefore respectfully requested that this Court grant a hearing

Nollan v. State Coastal Commission, 483 U.S. 825 (1987), is instructive. In *Nollan*, this Court found that singling out one property owner or group of owners to address a general problem was unconstitutional. Such is also the case here. Proposition 13 singles out new property owners to bear a disproportionate burden of the State's tax needs, a classic example of what *Nollan* prohibits—the government "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." 483 U.S. at 835-36 n.4.

in this case, and declare Section 2(a) of Proposition 13 unconstitutional.

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No. 90-1912

Supreme Court, U.S.

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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1990

STEPHANIE NORDLINGER,
Petitioners,

VS.

KENNETH HAHN, etc., et al.
Respondents.

Petition for a Writ of Certiorari
to the Court of Appeal
of the State of California,
Second Appellate District

AMICUS CURIAE BRIEF OF THE STATE OF CALIFORNIA IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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**In the
SUPREME COURT OF THE UNITED STATES
October Term, 1990**

No. 90-1912

STEPHANIE NORDLINGER,
Petitioners,

v.

KENNETH HAHN, etc., et al.
Respondents.

Petition for a Writ of Certiorari
to the Court of Appeal
of the State of California,
Second Appellate District

**AMICUS CURIAE BRIEF
OF THE STATE OF CALIFORNIA
IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

INTEREST OF AMICUS CURIAE

The State of California, on behalf of the
California State Board of Equalization, submits this
brief pursuant to Rule 37 as amicus curiae in support

of respondent Los Angeles County and in opposition to the petition for writ of certiorari.

The California State Board of Equalization performs specified powers and duties with regard to real property taxation prescribed under Proposition 13 and other laws of the State of California. These powers and duties are generally set forth in the California Government Code. The Board prescribes rules and regulations to govern local boards of equalization when equalizing assessments and assessors designed to promote uniformity throughout the state and its local taxing jurisdictions in the assessment of property for the purposes of taxation. Calif. Gov. Code § 15606(c), (e). The Board also instructs and directs assessors as to their duties (Calif. Govt. Code § 15608) and determines the adequacy of the procedures and practices employed by a county assessor in the

valuation of property for the purposes of taxation (Calif. Govt. Code § 15640).

Two decisions frequently referred to in this brief are Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208 and Allegheny Pittsburgh Coal Co. v. County Com'n 488 U.S. 336 (1989). These decisions will commonly be referred to as "Amador" and "Allegheny".

INTRODUCTION

The decision of the court below (Pet. Cert. App. A) and other decisions of the California courts establish that the principles of the Equal Protection Clause and the decisions of this Court applying that clause to state taxation issues have been carefully and accurately applied to the California system of real property taxation and that neither the Allegheny decision nor the petition for certiorari in this

proceeding justifies review by this Court.

With respect to an earlier attack on the system of real property taxation under Article XIII A of the California Constitution (also known as Proposition 13), the California Supreme Court in Amador found Proposition 13 constitutional as against an equal protection challenge. Petitioner Nordlinger claims that the United States Supreme Court in Allegheny has found unconstitutional a taxing system operating almost identically to the California taxing system and expressly recognized that its ruling cast doubt on the validity of California's method. Pet. Cert. pp. 11-12. This is a totally faulty premise. There was no state taxation system in Allegheny analogous to California's system; thus Allegheny does not require a revision of the California courts' holdings.

This brief later contains more extensive discussion of the Allegheny case. Preliminarily, this Court there held that there was a denial of equal protection where West Virginia's own constitutional requirements that taxation was to be equal and uniform throughout the state, and that property was to be taxed according to its estimated market value, were violated by Webster County assessment practices. The County's practice valued the plaintiff coal company's real property on the basis of its recent purchase price, but made only minor modifications in the assessments of comparable lands which had not been recently sold - this practice resulted in gross disparities on the order of 8 and 35 to 1 in the assessed value of generally comparable property and would require more than 500 years for equalization of assessments as required by the West Virginia constitution. Allegheny, supra, 341-342.

The Supreme Court expressly noted in its footnote 4 that its opinion did

"not decide whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as 'Proposition 13.' Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred, constructed upon, or in a limited manner for inflation. Cal. Const., Art. XIII A, Sec. 2 (limiting inflation adjustments to 2% per year.) The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property."

Allegheny, supra, 344-345.

This court on June 3, 1991 granted certiorari in R. H. Macy & Co., Inc. v. Contra Costa County, U.S.S.Ct. No. 90-1603, wherein the constitutionality of Proposition 13 was placed in

question under both the equal protection and commerce clauses. That grant of certiorari may evidence the importance of property taxation to large segments of the population and the state and that this court had never ruled upon a state-adopted specific system such as is found in Proposition 13.

But it is respectfully submitted that California's system does not result in invidious discrimination and that the prior decisions of this Court, which recognize the board powers of the state to impose and collect taxes and make classifications in respect thereto, demonstrate that certiorari here ought to be denied.

It is the State of California's position that its system of real property taxation based upon a fair market value at the time of acquisition is not arbitrary - and is not in violation of the equal protection clause.

ARGUMENT

I. THE CALIFORNIA SUPREME COURT HAS PROPERLY RULED THE REAL PROPERTY TAXATION SYSTEM PRESCRIBED BY ARTICLE XIII A DOES NOT VIOLATE THE "EQUAL PROTECTION" CLAUSE OF THE UNITED STATES CONSTITUTION; THE PETITION FOR CERTIORARI OUGHT TO BE DENIED

Article XIII A of the California Constitution generally provides in sections 1(a) and 2(a) that "[t]he maximum amount of any ad valorem tax on real property shall not exceed One percent (1%) of the . . . county assessor's valuation of real property as shown on the 1975-76 tax bill under 'full cash value' or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." Section 2(b) further provides that this "full cash value base may

reflect from year to year the inflationary rate not to exceed 2 percent for any given year or . . . may be reduced to reflect . . . factors causing a decline in value."

(The phrase "acquisition value" has been sometimes used as shorthand for the specific language, "the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." This generalization should not obscure the fact that the value standard imposed generally upon a purchase or change of ownership is the full market value of the unencumbered fee simple interest, subject only to enforceable governmental restrictions. See Carlson v. Assessment Appeals Board No. I (1985) 167 Cal.App.3d 1004; Dennis v. County of Santa Clara (1989) 215 Cal.App.3d 1019.)

The California Supreme Court reviewed the equal protection implications of Proposition 13 in the Amador case and upheld the system prescribed with the following language:

"By reason of section 2, subdivision (a) of the article, except for property acquired prior to 1975, henceforth all real property will be assessed and taxed at its value at date of acquisition rather than at current value (subject, of course, to the 2 percent maximum annual inflationary increase provided for in subdivision (b)). This 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. For example, a taxpayer who acquired his property for \$40,000 in 1975 henceforth will be assessed and taxed on the basis of that cost (assuming it represented the then fair market value). This result is fair and equitable in that his future taxes may be said reasonably to reflect the

price he has originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. On the other hand, a person who paid \$80,000 for similar property in 1977 is henceforth assessed and taxed at a higher level which reflects, again, the price he was willing and able to pay for that property. Seen in this light, and contrary to petitioners' assumption, section 2 does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purchase. This is an arguably reasonable basis for assessment."

(Amador, supra, 235.)

The California Supreme Court stated its ultimate holding on the equal protection issue as follows:

"We cannot say that the acquisition value approach incorporated in article XIII A, by which a property owner's tax liability bears a reasonable relation to his costs of acquisition, is wholly arbitrary or irrational. Accordingly, the measure under scrutiny herein meets the demands of equal protection principles."

(Amador, *supra*, 237.)

Petitioner contends that the Amador case merely upheld Proposition 13 against a facial equal protection challenge where no specific disparity was presented to the court. Pet. Cert. p. 16. These allegations detract in no respect from the holding of the Amador decision and that of the court below.

The Amador court recognized that a "serious and substantial" attack on Proposition 13 existed because it could result in properties of the same current market value having markedly different assessed values and gave as an example a difference in assessment of a ratio of 2-1 for comparable property acquired only two years apart. Amador, *supra*, 235; see also Amador, *supra*, 249, 251, 252 (Bird., Ch. J., dissenting) -- intentional systematic undervaluation of properties of same current worth which will vary with

the degree of property value appreciation. The Amador court's use of a 2-1 ratio in acquisition values occurring over a period of only two years belies any suggestion that the court felt that "practical uniformity" or "rough equality" would be secured in generally inflationary times.

Petitioner Nordlinger's argument that the Allegheny case found unconstitutional a system which was almost identical to that imposed by Proposition 13 (Pet. Cert. p. 11) completely ignores two controlling factors:

(1) The West Virginia constitution, unlike the California Constitution, specifically required that property taxes were to be "equal and uniform throughout the State, and ... in proportion to its value" (Allegheny, *supra*, 338); and

(2) The United States Supreme Court specifically stated that it was not deciding whether the California policy under Proposition 13 was a denial of equal protection.

In fact, if the Allegheny decision had merely stated a flat rule that all real property must be taxed with the same current value standard (be it current fair market value or some percentage thereof) applicable to all properties (laying aside the questions of constitutional exemptions or other value or non-value classifications), there would have been no rationale whatsoever for the Court to insert its footnote 4 referring to California's system under Proposition 13. The plain meaning of footnote 4 is that the court recognized the significant difference between the California law and the aberrational policy of Webster County vis-a-vis West Virginia law and was making

clear that the decision in the Allegheny decision should in no respect be interpreted to reach a conclusion of unconstitutionality with respect to California's system.

**A. The State Of California's
Broad Discretion In
Classification For Purposes
Of Taxation Will Only
Contravene The Equal
Protection Clause If The
Classification In Support
Of A State Goal Is Palpably
Arbitrary**

A recent summarization of the state's broad discretion in classification for purposes of taxation is found in the Allegheny case (p. 344):

"The States, of course, have broad powers to impose and collect taxes. A State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable. *Allied Stores*, supra, 358 U.S., at 526-527, 79 S.Ct., at 440-441 ("The State may impose different specific taxes upon different trades and professions and may vary the rate of excise upon various products"). It might, for example, decide to tax property held

by corporations, including petitioners, at a different rate than property held by individuals. See Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356, 93 S.Ct. 1001, 35 L.Ed.2d 351 (1973) (Illinois ad valorem tax on personalty of corporations.) In each case, '[i]f the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.' Brown-Forman Co. v. Kentucky, 217 U.S. 563, 573, 30 S.Ct. 578, 580, 54 L.Ed. 883 (1910)."

Indeed, it is to this discussion that the Court attached its footnote that it was not deciding the validity of California's policy under proposition 13 and was only looking at Webster County's assessment method which it described as aberrational to West Virginia law.

These same principles are set forth in the Amador case (pp. 233-234) with extensive citation to decisions of the United States Supreme Court.

What the Equal Protection Clause requires is that a state's classification not be arbitrary or

capricious in relation to a legitimate state interest -- that there be no invidious discrimination by the legislature. Allied Stores of Ohio v. Bowers (1959) 358 U.S. 522, 527; New Orleans v. Dukes (1976) 427 U.S. 297, 303-304; Lehnhausen v. Lake Shore Auto Parts Co., (1972) 410 U.S. 356, 359; Kahn v. Shevin (1974) 416 U.S. 351, 355 356. It is the plausible existence of a rational basis rather than its de facto use by the legislature or its specific articulation in the legislation which sustains classifications as against the Equal Protection clause. See United States Railroad Retirement Board v. Fritz (1980) 449 U.S. 166, 177-179. To use other language, if it is at least debatable whether the legislature "rationaly could have believed" that the legislation would promote an objective of a legitimate state purpose, parties challenging legislation under the Equal Protection Clause cannot prevail.

Western & Southern L. I. Co. v. Bd. of Equalization

(1981) 451 U.S. 648, 670, 672, 674 (emphasis by the Court).

The general principles applicable to the determination of an equal protection challenge to state tax legislation were summarized by this Court as follows:

"We have long held that '[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.' [Citation.] A state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class. . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal constitution. [Citation.] This principle has weathered nearly a century of Supreme Court adjudication"

Kahn v. Shevin (1974) 416 U.S. 351, 355-356.

"There is a presumption of constitutionality which can be overcome 'only by the most explicit demonstration that a

classification is a hostile and oppressive discrimination against particular persons and classes.' . . . 'The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it.'"

Lehnhausen v. Lake Shore Auto Parts Co. (1972) 410 U.S. 356, 364.

Numerous classifications have been upheld against claims of denial of equal protection, and the Allegheny decision cites Charleston Fed. Savings & Loan Assn. v. Alderson (1945) 324 U.S. 182, 190 for a collection of cases.

The Amador case points out that this state's "Legislature is empowered to grant total or partial exemptions from property taxation on behalf of various classes (e.g., veterans, blind or disabled persons, religious, hospital or charitable property; see art. XIII, § 4), despite the fact that similarly situated property may be taxed at its full value. In addition,

homeowners receive a partial exemption from taxation (art. XIII, § 3, subd. (k)) which is unavailable to other property owners. As noted previously, the state has wide discretion to grant such exemptions. (Royster Guano Co. v. Virginia, supra, 253 U.S. 412, 415 [64 L.Ed. 989, 991].)" Amador, supra, 236.

Petitioner pejoratively characterizes the California system as a "welcome stranger" system to bring it within those procedures struck down as unconstitutional where a local assessor in generally inflationary periods merely revalued and reassessed recently acquired property where state law required property to be assessed at its current fair market value. See, e.g., West Milford Tp. v. Van Decker (N.J.Super. A.D. 1989) 561 A.2d 607.

Such procedure deprived recent purchasers of property of the equal protection of the state law.

There is no question but that in inflationary times, the California system will result in properties more recently purchased being assessed at higher values than comparable property earlier acquired -- the fair market values at the substantially different times of acquisition will be different in inflationary period.

The question before this court is whether such a system denies the equal protection of the law required by the United States Constitution -- is there no rational basis for the California system's departure from a system where all properties are assessed at a current fair market value.

This system does not find infirmity through isolated comparisons such as the Beverly Hills and Venice homes referred to at pages 9-10 of the petition for certiorari.

Single isolated examples of great disparities could occur from several factors apart from the general system utilized by California.

For example,

(1) Land values could rise sharply in a given area with a modest structure thereon itself not reflecting that rise -- a simple comparison of structures is not adequate; (2) A specific property might have escaped revaluation and assessment to reflect the market value as of the 1975-1976 assessment with a limitation of time precluding later reassessment.

The "gross disparities" referred to by the court below are not specified but it should be noted that the ratio of petitioner's 1988 purchase assessment to that of assessments based on the "acquisition" values of the 1975-1976 assessment date are about 4-1. Pet. Cert. p. 6. See also Northwest Financial, Inc. v. State

Bd. of Equalization (1991) 229 Cal.App.3d 198, 201.

**B. Real Property Taxation
Under Proposition 13
Consists Of A Rational
Approach To A Legitimate
State Interest And Meets
The Requirements Of The
Equal Protection Clause**

The California Supreme Court distinguished the operation of Proposition 13 from those United States Supreme Court cases holding that intentional and systematic undervaluation of some properties similarly situated to property in the same class which is assessed at full current value violated equal protection principles by pointing out that those cases involved

"provisions which mandated the taxation of property on a current value basis. These cases do not purport to confine the states to a current value system under equal protection principles or to state an exception to the general rule accepted both by the United States Supreme Court and by us, as previously noted, that a tax classification or disparity of tax treatment will be sustained so long as it is

founded upon some reasonable distinction or rational basis."

Amador, supra, 235.

Given the context of the equal protection standards discussed in the previous section of this brief, it is worth repeating the heart of the statement that the Amador court used to uphold Proposition 13 acquisition value assessment of property under the Equal Protection Clause as follows (at p. 235):

"This 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. . . . [S]ection 2 does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased in 1975, namely, on an acquisition value basis

predicated on the owner's free and voluntary acts of purchase [rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control.] This is an arguably reasonable basis for assessment."

It is not suggested that the administrative convenience of an acquisition value system of taxation would by itself justify deviation from rough comparability of a state system basing taxation upon current fair market value. But that administrative convenience, afforded through inexpensive and verifiable evidence as compared to the cost of periodic reassessments, would be a practical factor in a state's choice of an acquisition value system of property taxation and additional rational basis for state adoption of that system. Cf. Robert Jerome Glennon, Taxation and Equal Protection 58 Geo. Wash. L.Rev. 261, 302.

Petitioner argues that the California system of taxation of property based on acquisition value must receive heightened scrutiny because the classification is based on residence and has an inhibiting effect on interstate mobility. Pet. Cert. pp. 22-24.

The cases cited by petitioner involve state legislation with classifications specifically based on length of residency. See Zobel v. Williams (1982) 457 U.S. 55 (mineral dividend program distributed moneys to residents based on number of years of residence within the state); Hooper v. Bernalillo County Assessor (1985) 472 U.S. 612 (partial property tax exemption for certain Vietnam veterans was limited to those veterans who were residents of New Mexico prior to May 8, 1976).

Equal protection analysis applied to residency requirements is sometimes characterized as a

"right to travel." See Zobel v. Williams (1982) 457 U.S. 55, 60. This state's classification of real property taxes based on fair market value as of acquisition does not penalize or actually deter travel nor does it have that as its objective in any respect much less as a "primary" objective. Any rationale for a heightened scrutiny is completely absent. See Attorney General of New York v. Soto-Lopez (1986) 476 U.S. 898, 903 (civil service employment preference granted to veterans who were New York residents at time of entering service).

The Amador court discussed the contention that Proposition 13 would favor residents and established property owners and inhibit movement from out-of-state and from location to location in-state as follows:

"As we have explained in discussing petitioners' equal protection challenge, no penalty is imposed on the owner. The change from a current value system to an acquisition value method is intended to benefit all property owners, past and future, resident and nonresident, by reducing inflationary increases in assessments, by limiting tax rates, and by permitting the taxpayer to make more careful and accurate predictions of future tax liability. Under the former system, it was arguable that prospective purchasers of real property might have been deterred from purchasing (thereby impairing their right to travel) by reason of the unpredictable nature of future property tax liability resulting from unlimited inflationary pressures. Certainly, travel is inhibited to no greater extent by the new system, which establishes a more fixed and stable measure than that imposed by the former system of unconstrained property taxation based on current values. Accordingly, we hold that the right to travel is not unconstitutionally impaired by article XIII A."

Amador, supra, 238.

Proposition 13 in no respect classifies the taxation of property by length or existence of residency. The classification by acquisition date, by date of change of ownership, is wholly unrelated to residency. The

right to buy property or determine when the property shall be bought or sold depends in no respect on residency. The change of ownership provision operates completely without regard to whether the owner is a resident or not. Also there is no distinction whatsoever as to length of residency. It may well be that a person who pays higher taxes because of a recent acquisition is a long-time resident whereas one who owns similar property and pays lower taxes is a non-resident or more recent resident who has owned the property for some time prior to the recent acquisition by the long-time resident. There is no discrimination under Proposition 13 such as that which was clearly aimed at newer residents and intended to favor established residents in the Zobel, Hooper and Soto-Lopez cases cited by petitioner.

CONCLUSION

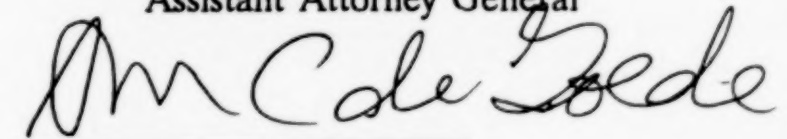
The decisions of the California courts have fully and properly applied the principles of this Court's decisions in measuring state taxation under Proposition 13 against the Equal Protection Clause and the petition for certiorari does not present grounds for review by this Court.

It is respectfully submitted that federal law does not require that property taxation be based on current fair market value and that California's system of basing taxation of property upon its value upon acquisition is in accord with the equal protection clause.

The petition for certiorari ought to be denied.

Respectfully submitted,

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JUL 25 1991

OFFICE OF THE CLERK

No. 90-1912

In the Supreme Court of the United States

October Term, 1990

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as
Tax Assessor for Los Angeles County
and the COUNTY OF LOS ANGELES,*Respondents.*PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

This Court has recently determined in granting certiorari in a similar and closely related case, *R.H. Macy & Co., Inc. v. Contra Costa County*, No. 90-1603, *cert. granted* 59 U.S.L.W. 3809, *cert. dismissed* 111 S.Ct. 2923 (1991) ("*Macy's*"), that the constitutionality of Proposition 13's assessment method is an unresolved and important federal question. When this Court struck down the Webster County, West Virginia "welcome stranger" property tax method at issue in *Allegheny Pittsburgh Coal Co. v. County Commission*, it expressly recognized that its decision cast doubt on the validity of California's Proposition 13. 488 U.S. 336, 344 n.4 (1989). The Court left open for another day, however, the determination of Proposition 13's constitutionality. When that day arrived and *Macy's* reached the Court, the Court granted certiorari. *Macy's*, however, soon determined that it did not wish "to become the agent for change on this important public policy issue," *Los Angeles Times*, June 8, 1991 at 1, and withdrew its petition for certiorari on June 28, 1991.

This case is the second Proposition 13 challenge to reach the Court. Despite the Court's clear indication—through its granting of the *Macy's* petition—that the constitutionality of Proposition 13 remains unresolved, respondents inexplicably argue that "the property tax classification system in . . . [Proposition 13] presents no new or special constitutional issues or important reasons for granting . . . certiorari." Respondents' Brief in Opposition ("Resp. Br.") at 6. Respondents are incorrect. The new question presented in this case is whether a state by legislative enactment can systematically and intentionally shift an ever-increasing amount of its property tax burden away from longtime property owners and onto newcomers. The question is *important* both because such a policy has been adopted by the largest state in the Union, and because, absent a ruling striking down such a taxing provision, the political

irresistibility of shifting taxes onto newcomers will likely tempt other states across the country to adopt similar schemes.

Respondents seek, unsuccessfully, to distinguish this case from the *Macy's* challenge in two respects. First, they argue that "[t]he petition in *Macy's* was carefully limited to commercial property." Resp. Br. at 6. This case, on the other hand, contains no such limitation. Although petitioner Stephanie Nordlinger is a residential property owner, her proposed second amended complaint alleges widespread disparities among all types of properties, including commercial property, residential income property, and vacant lots, as well as residences. II J.A. at 270-272. She thus seeks a declaratory judgment that the welcome stranger provision of Proposition 13 is unconstitutional "insofar as it requires that owners of similarly situated property be taxed disparately." See II J.A. at 275. This case is simply more inclusive than *Macy's*, not distinguishable, and will resolve for all property types the question of Proposition 13's constitutionality.¹

Respondents next attempt to distinguish this case from *Macy's* by attacking the record upon which this case is based. See, e.g., Resp. Br. at 3 ("[t]he amount and degree of disparities offered by Petitioner as fact are essentially nothing more than conjecture"). Respondents' attack flies in the face of overwhelming evidence presented by petitioner (on behalf of her proposed second amended complaint) of gross inequities in the taxation of similarly situated property,

¹Indeed, R. H. Macy's attempt to limit its challenge to commercial property only was itself inconsistent with Proposition 13, which does not create a split assessment roll by distinguishing among types of property. As respondents argued to the court of appeal below, "Proposition 13 reflects [a] policy choice [against a split roll], and treats residential and commercial properties the same." Los Angeles County's Response to Amicus Curiae Brief of Charles Ajalat at 3. Apparently recognizing that its case at least indirectly would affect residential property, Macy's withdrew its certiorari petition. See Los Angeles Times, June 8, 1991 at 1 (quoting Macy's statement that "there is no way to guarantee that pursuing [the Macy's challenge] through the courts may not ultimately have some effect on homeowners").

evidence so convincing that the court of appeal below relied on it to take judicial notice of the inequalities. The court concluded that "it is not reasonably disputable that article XIII A has resulted in gross disparities in the assessments of properties with similar current market values" *Nordlinger*, 225 Cal.App.3d at 1271, 275 Cal.Rptr. at 690. The court below further characterized petitioner Nordlinger's studies as providing ". . . ample evidence of the distortions created by Proposition 13. . . ." *Id.* at 1268, 275 Cal.Rptr. at 688.²

Furthermore, the legal posture of this case, which exists because of respondents' own action in successfully demurring

²Indeed, counsel for respondents in the court of appeal below expressly characterized the gross disparities established by petitioner's evidence as "shocking"—evidence that, as in the *Macy's* challenge, is derived in the main from the Assessor's own computerized records of property tax assessments. Though respondents attempt to portray petitioner's comprehensive studies as somehow statistically insignificant and unrepresentative of property throughout Los Angeles County, the 10,000 sales considered in the County-Cross Section study represent every residential sale in the entire county during the month of August, 1989. Moreover, respondents presented as an exhibit to their brief in the court of appeal below their own evidence of property tax disparities in Los Angeles County. The evidence is remarkably consistent with the data included in both the *Macy's* study and petitioner's study. All data show that by 1989, just 11 years after Proposition 13 was enacted, the average disparity between new and long-time homeowners had already reached 5:1. Respondents' own exhibit also shows that by 1989 the average disparity throughout much of the county was 7:1, and in Beverly Hills had reached 10:1. The differential appreciation rates between Los Angeles' wealthy and gentrifying neighborhoods, which have seen rapid real estate appreciation, and its slower-growing impoverished areas helps explain why petitioner's County Cross-Section Study identified more than 30 distinct regions where the disparities had reached 10:1 or more.

Respondents even question various other allegations derived directly from such universally respected sources as the government's Consumer Price Index (the basis for the allegation that pre-1978 owners paid 61% more on their first post-Proposition 13 tax bills than they do today) and the Census (the basis for the allegations that many movers do so out of necessity).

to petitioner's First Amended Complaint, requires both this Court and respondents to assume that petitioner's allegations are true. See, e.g., *Rader Co. v. Stone*, 178 Cal.App.3d 10, 20, 223 Cal.Rptr. 806, 809 (1986). Respondents' attack on the record is legally inappropriate.³

The remainder of Respondents' arguments are aimed at convincing this Court that, on the merits, Proposition 13

³Respondents' belated contention that "the record . . . does not provide an adequate basis to permit a review of Proposition 13," Resp. Br. at 10, is belied by their own words to the court of appeal below. There, they urged the court to determine Proposition 13's constitutionality with the case on demurrer because "a remand for an evidentiary hearing . . . serves no purpose as the core issues here concern law and policy." See Los Angeles County's Response to Amicus Curiae Brief of Charles Ajalat at 4. Respondents' contention also ignores this Court's own actions in frequently deciding important constitutional questions on demurrer (or its procedural equivalent). See e.g., *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898, 901 (1986) (appellants state a claim that New York's civil service preference for veterans who resided in New York when they entered U.S. Armed Forces violates the equal protection clause); *Williams v. Vermont*, 472 U.S. 14 (1985) (appellants state a claim that Vermont automobile use tax is unconstitutional as applied to recent residents).

Respondents' suggestion that the Court should reject this petition for certiorari because the factual allegations have not been proven would leave Proposition 13 essentially immune from constitutional attack. Although the county defendant in *Macy's* stipulated to an evidentiary record, in future cases no defendant would do the same if it could avoid Supreme Court review simply by demurring to a complaint. It is clear that California courts would sustain any such demurrer absent a ruling from this Court. See, e.g., *Nordlinger v. Lynch*, 225 Cal.App.3d 1259, 275 Cal.Rptr. 684 (1990), rev. den. Feb. 28, 1991; *R.H. Macy & Co. v. Contra Costa Co.*, 226 Cal.App.3d 352, 276 Cal.Rptr. 530 (1990), rev. den. Feb. 28, 1991, cert. granted 59 U.S.L.W. 3809, cert. dismissed 111 S.Ct. 2923; *Northwest Financial, Inc. v. State Board of Equalization*, 229 Cal.App.3d 198, 280 Cal.Rptr. 24 (1991), rev. den. July 11, 1991 (where in each case the state court of appeal found itself bound by the state supreme court's *Amador Valley* ruling upholding Proposition 13 and where the state supreme court denied requests for review).

is constitutional. They provide no reason to deny the petition for certiorari in the face of this Court's clear interest in resolving the important federal questions raised.

1. Classification. Respondents spend much of their brief arguing about the indisputable power of states to classify citizens for taxation purposes. Nowhere, however, do they describe for the Court the classes that Proposition 13 ostensibly creates. Indeed, respondents even argue that "all purchasers of property are treated the same under Article XIII A's classification system." Resp. Br. at 13-14. If that is the case, Proposition 13 does not classify taxpayers at all, yet clearly discriminates unconstitutionally against recent purchasers of property who, although subject to the "same" assessment rules as long-time owners of comparable property, pay far more in taxes.

Respondents have previously characterized the welcome stranger provision as creating a new assessment class "each day." Respondents' Brief, filed in the court of appeal, at 10. By this description, starting with the 1975 base year, Proposition 13 has already created more than 5,800 classes and will henceforth add another 365 annually. This Court has soundly rejected the creation of "expanding numbers of permanent classes." *Zobel v. Williams*, 457 U.S. 55, 64 (1982). Moreover, it has held that a classification scheme "must reflect preexisting differences; it cannot create new ones that are supported only by their own bootstraps." *Williams v. Vermont*, 472 U.S. 14, 27 (1985). Proposition 13 violates both the *Zobel* and *Williams* proscriptions. It creates ever expanding permanent classes based not on any preexisting differences among the various classes, but on differences created by Proposition 13's own discriminatory assessment scheme.

Petitioner does not suggest that states lack the power to classify taxpayers, nor that "all taxes on property must be based on a current market value system to meet the

requirements of the Equal Protection Clause.”⁴ Resp. Br. at 14. But this case raises an altogether different question: once a state adopts an *ad valorem* property tax system that uses market value to establish initial property tax assessments, as California has, can it artificially cap annual increases in assessments, so that long-time owners pay taxes on outdated values, while new buyers must pay vastly higher taxes on the full value of comparable properties? The only criterion for who gets the favored low assessments and who gets the harsh high assessments is who was lucky enough to be here first and could afford to be in the market when values/prices were low. As this Court stated in *Allegheny*, “the fairness of one’s allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings.” 488 U.S. at 346. California’s welcome stranger scheme clearly departs from this fundamental constitutional principle.

2. Justifications for the discrimination. Respondents baldly assert that *Allegheny*’s requirement to seasonably achieve a rough equality in the taxation of owners of comparable property does not apply to California for the simple reason that Webster County adopted its welcome stranger scheme administratively, whereas California enacted its legislatively. Petitioner agrees that the distinction between the two systems exists. See Petition for Writ of Certiorari (“Petition”) at 13. Of course, the question facing this Court, and the question respondents fail to address, is *why* California should be permitted to do by legislation what Webster County is prohibited from doing administratively.

Without ever addressing this fundamental question, respondents then attempt, unsuccessfully, to justify Proposition 13’s grossly inequitable taxing scheme.

⁴For example, a tax based on a property’s square footage, or on the number of bedrooms per house, or even, as suggested in the petition for certiorari, a tax that assessed all taxpayers, new and old, as of the value of their property in a set base tax year, may well comport with equal protection requirements.

The first proffered justification is that Proposition 13’s so-called “acquisition value approach” allows taxpayers to estimate “with some assurance [their] future tax liability.” Resp. Br. at 17, quoting *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 235, 149 Cal.Rptr. 239, 251 (1978). But this justification fails to explain why taxpayers are treated *differently*. An equal protection analysis must answer the question “what is the characteristic of the disadvantaged class that justifies the disparate treatment?” *City of Cleburne, Tex. v. Cleburne Living Center*, 473 U.S. 432, 453 (1985) (Stevens, J. and Burger, C.J., concurring). The “predictability” justification fails to identify what characteristic newcomers possess that justifies their paying very high predictable taxes when longtimers pay very low predictable taxes.

Respondents also argue that an acquisition value approach “may be said reasonably to reflect the price [a taxpayer] was originally willing and able to pay for his property rather than an inflated [future] value. . . .” Resp. Br. at 18, quoting *Amador*, 22 Cal.3d at 235; 149 Cal.Rptr. at 251. This argument, however, ignores Proposition 13’s central shortcoming. Newcomers, whether they be new residents to the state, new businesses, frequent movers or those too young to have purchased property many years ago, have no ability, though surely a great deal of willingness, to assume the very low taxes (and mortgage payments) available to the longtimers.

In a twist on the second justification, respondents argue that Proposition 13 avoids taxing property owners on “unrealized paper gains” in the value of their property, and hence is a better reflection of ability to pay than assessments based on the current market value of the property. Of course in year one, when a taxpayer first purchases the property, his or her assessment reflects both what he or she was able to pay for the property and its current market value. Evaluating this justification requires examining Proposition

13's operation over time, as the acquisition value of the property and its current value diverge more and more dramatically. This inquiry makes Proposition 13's lack of rationality most apparent. By relying on a real estate transaction that may have taken place sixteen years ago or more to establish, year in and year out, a property owner's tax liability, Proposition 13 utterly eliminates any link between ability to pay and the taxes levied. Indeed, most long-time property owners are typically far *more* able to pay higher taxes sixteen years after their purchase than are recent purchasers.⁵

Certain long-time taxpayers may lack the ability to pay higher taxes than they now pay under Proposition 13. But then again they may not. The point is that a transaction that took place sixteen years ago or more sheds *no* light on whether a taxpayer can presently afford his or her current property taxes. "The State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *Cleburne*, 473 U.S. at 446.⁶

⁵The mortgage payments of long-time owners as a percentage of income typically have declined dramatically, while their income has increased significantly, and indeed they now own a great deal of equity in the properties they purchased (equity that remains untaxed even when realized). Newcomers, by contrast, typically pay huge mortgage payments on top of huge property taxes, and often own little equity in their recently purchased properties.

⁶Respondents imply that, because commercial property is "income producing," increases in its value are more likely to be accompanied immediately with increases in the property's income. Thus, respondents suggest, commercial property owners have a somewhat better ability to pay increased taxes based on increases in property values under a current market value system than residential property owners do. Resp. Br. at 18-19. If true, this would simply mean that Proposition 13's welcome stranger system is even more constitutionally suspect for commercial properties than it is for residential properties. It is hardly a justification for Proposition 13's discriminatory treatment of newcomers. Furthermore, as with residential taxpayers, this may or may not be the case. Some increases in the value of commercial property translate into immediate increases in income through higher

Respondents also acknowledge the true policy rationale for the change in ownership provision: without reassessing property upon a change in ownership, government would lack the necessary revenue to meet rising costs associated with inflation and population increases. See Resp. Br. at 8. Thus the welcome stranger provision is a convenient mechanism to saddle the newcomer with government's demand for increased revenue (with an added bonus to longtimers, who receive tidy annual tax cuts in real dollars in every year that inflation exceeds Proposition 13's 2% assessment cap). This justification, if allowed to sustain Proposition 13, would allow a state to justify any discrimination by the need for increased governmental revenues, including the very discrimination found unconstitutional in *Allegheny*.

3. Heightened scrutiny. The political attractiveness of a welcome stranger method of taxation is undeniable. A majority of current, identifiable voters can vote for themselves perpetually low, even declining taxes while shifting onto an unrepresented, inchoate and ever-changing group of newcomers the bulk of the tax burden. The only consolation for the newcomers is that there will always be an even less fortunate group of future newcomers out there, yet to be identified, who will suffer an even greater tax burden.

It is precisely because of the political irresistibility of shifting the tax burden onto a group that does not even know who it is, let alone onto a group unrepresented in the political process, that requires the application of heightened judicial scrutiny to this case. Respondents seem to argue that because California does not discriminate directly on the basis of

rents. Some increases in the value of commercial property, like a small, owner-operated grocery store, cannot be recouped by the owner until the property is sold. Similarly, some increases in the value of residential property, such as an apartment building, translate into immediate increases in income through higher rents, while some increases in value do not. The point is that the so-called "acquisition value" approach overtime has no connection to a taxpayer's ability to pay.

residency this Court's interstate mobility cases requiring heightened scrutiny do not apply. But Proposition 13, on its face, makes distinctions among taxpayers based on when they purchased their property. And the state's voters in enacting various exceptions to the change in ownership provision, have explicitly acknowledged that Proposition 13 imposes a stiff penalty on mobility by requiring that taxes will increase by 5, 10, or 15 times or more simply because a taxpayer sells one house and buys another of equal or even lesser value.⁷ Respondents have offered no principled reason why the constitution should *prohibit* discrimination on the basis of residence per se without a compelling purpose, but should *allow* discrimination on the basis of the timing of purchase of one's residence with virtually no justification, when the parallels between the two forms of discrimination are so stark.

Proposition 13's discriminatory effects are undeniable. New property owners pay many, many times the taxes paid by longtime owners of properties comparable in all respects. This Court has stated that such discrimination, when imposed administratively, cannot withstand constitutional scrutiny. Whether the largest state in the Union can legislatively mandate the very same inequalities is a question that deserves careful judicial review. The Court should grant the petition for certiorari.

Respectfully submitted

CARLYLE W. HALL, JR., Counsel of Record

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STEPHANIE NORDLINGER

⁷The ballot argument in favor of a successful constitutional amendment that exempted senior citizens who sell and then purchase a home of lesser or equal value from the change in ownership provision stated: "[I]t will allow older Californians the freedom to sell their home and move." Proposition 60 Ballot Pamphlet, Arguments of Proponents (Nov. 1986).

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on July 25, 1991, I served the within *Reply To Respondents' Brief In Opposition* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(By Express Mail: original
and forty copies)

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I declare under penalty of perjury that the foregoing is true and correct. Executed on July 25, 1991, at Los Angeles, California.

Betty J. Malloy
(Original signed)

DEC 23 1991

OFFICE OF THE CLERK

No. 90-1912

In the Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County, and the COUNTY OF LOS
ANGELES,*Respondents.*ON WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

JOINT APPENDIX

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Petition for Certiorari Filed May 28, 1991
Certiorari Granted October 7, 1991

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No. 90-1912
**In the Supreme Court of the
United States**

October Term, 1991

STEPHANIE NORDLINGER,

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v.

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County, and the COUNTY OF LOS
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Respondents.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

JOINT APPENDIX

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Petition for Certiorari Filed May 28, 1991
Certiorari Granted October 7, 1991

RELEVANT DOCKET ENTRIES**DOCUMENT TITLE**

Amended Complaint for Declaratory Relief Pursuant to California Revenue and Taxation Code § 4808 and for Refund of Property Taxes, filed October 25, 1989

Notice of Hearing of General Demurrer; General Demurrer of John J. Lynch to Plaintiff's Amended Complaint; Memorandum of Points and Authorities in Support Thereof, filed November 16, 1989

Memorandum of Points and Authorities in Opposition to General Demurrer of Defendant John J. Lynch to Plaintiff's Amended Complaint; Declarations and Exhibits, including Proposed Second Amended Complaint, filed January 22, 1990

Minute Order sustaining respondents' demurrer, entered January 29, 1990

Order of Dismissal, filed February 23, 1990

Notice of Appeal, filed February 28, 1990

Opinion of the Court of Appeal for the State of California, Second Appellate District, Division 3, affirming order of the Superior Court of Los Angeles County, filed December 3, 1990

Petition for Review, filed January 14, 1991

Notice of California Supreme Court denial of petition for review, filed February 28, 1991

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

[Attorney Names and Addresses
Omitted in Printing]

[ORIGINAL FILED
October 25, 1989
COUNTY CLERK]

STEPHANIE)	Civil No. C738781
NORDLINGER,)	AMENDED COMPLAINT
an individual,)	FOR DECLARATORY
Plaintiff,)	RELIEF PURSUANT
v.)	TO CALIFORNIA
JOHN J. LYNCH, in his)	REVENUE & TAXATION
capacity as Tax Assessor)	CODE § 4808 AND
for Los Angeles County,)	FOR REFUND OF
and LOS ANGELES)	PROPERTY TAXES
COUNTY)	
Defendants.)	

Plaintiff alleges:

INTRODUCTION

1. This is an action challenging the constitutionality of Article XIII A of the California Constitution. Plaintiff is (a) seeking a judgment under section 4808 of the Revenue and Taxation Code declaring that the provisions of Article XIII A of the California Constitution, which result in owners of similarly situated real properties being subject to widely disparate real property taxes violate the equal protection guarantees of the state and federal constitutions; and (b) seeking a refund of property taxes unlawfully collected from plaintiff pursuant to Article XIII A.

2. Before 1978, California law mandated the use of a scheme used in many jurisdictions for assessing and taxing real property. It required that real property be reassessed annually so that it could be taxed according to its current fair market value. As a result, owners of similarly situated properties paid approximately the same amount of ad valorem real property taxes.

3. In 1978, Article XIII A (popularly called Proposition 13) was added by initiative to the California Constitution. Article XIII A limits the maximum ad valorem tax rate on real property to 1% of its "full cash value." Article XIII A defines full cash value in one of two ways: for individuals who have owned the same property continuously since 1975, "full cash value" equals the assessed value of the property as of the 1975-76 tax year. For those who purchase, newly construct or otherwise acquire property after the 1975-76 tax year, "full cash value" equals the property's fair market value when purchased, newly constructed, or when a change in ownership occurs. Article XIII A also provides that the "full cash value base" may reflect "from year to year" an inflationary rate not to exceed 2%.

4. Because property values have risen much more rapidly than 2% a year since Article XIII A was adopted, the provisions of Article XIII A which freeze a person's property tax according to the date the property was acquired or newly constructed establish a system which invidiously and routinely discriminates against recent property owners in favor of longtime property owners. Such a discriminatory system has been labeled a "welcome stranger" system because longtime property owners who had the capacity to own and hold property at an earlier date enjoy low property taxes while newcomers to the same neighborhood are taxed at much higher levels.

5. On September 22, 1978 in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3rd 208 (1978), the California Supreme Court upheld Article XIII A against a "facial" challenge that it violated constitutional equal protection guarantees. No evidence of actual disparate tax treatment for owners of similarly situated properties was presented to the Court, and the decision was not appealed to the United States Supreme Court. Since this decision, several California courts have upheld Article XIII A against other equal protection challenges.

6. On January 18, 1989, in *Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia*, 109 S.Ct. 633 (1989), the United States Supreme Court invalidated a tax assessment system which used a "welcome stranger" provision similar to that contained in Article XIII A. Under the challenged scheme, a property was generally reassessed only when that property was sold. Because this West Virginia assessment system resulted in the owners of similarly situated properties paying widely divergent tax bills, the Court concluded that it violated the Equal Protection Clause of the 14th Amendment to the United States Constitution.

7. The discriminatory impact of the unlawful Webster County, West Virginia system is indistinguishable from that of Article XIII A's "welcome stranger" provision as applied in 1989, and this new Supreme Court case provides compelling authority that Article XIII A's tax assessment system as applied in 1989 is unconstitutional.

8. Proposition 13 prescribes how the defendant and all other California county tax assessors may value real property and prohibits the defendant assessor from assigning a value to plaintiff's property that corresponds with the assessed values of comparable properties. Unless

those provisions of Proposition 13 which result in discriminatory assessments are declared to be unlawful, plaintiff's property and all other real property in Los Angeles County and the State of California will continue to be assessed in a manner that violates state and federal constitutional equal protection guarantees.

PARTIES

9. Plaintiff Stephanie Nordlinger owns and resides in the home located at 3933 S. Sycamore Avenue in the City of Los Angeles in Los Angeles County.

10. Defendant John J. Lynch is the tax assessor for Los Angeles County.

11. Defendant Los Angeles County is a political subdivision of the State of California.

TAX ASSESSMENT OF 3933 S. SYCAMORE

12. On November 1, 1988, plaintiff purchased the house and lot located in the "Baldwin Hills" neighborhood at 3933 S. Sycamore Avenue in Los Angeles County, for \$170,000. This property is described by the Los Angeles County Assessor's office as Tract No. 13372, Lot 110. Before her purchase of 3933 S. Sycamore, plaintiff had never owned real property in the State of California. Consequently, she had never been assessed any real property taxes nor had she paid any real property taxes.

13. Plaintiff's property is part of a tract of single family homes developed and built in 1947 by the Baldwin Hills Development Company. Today, the neighborhood still consists of moderately priced single family homes. While some residents have owned their homes for twenty years or more, many Baldwin Hills residents, like plaintiff, are newcomers.

14. Plaintiff's lot at 3933 S. Sycamore is 8200 square feet, and her house contains 1114 square feet. Her house contains three bedrooms and one bathroom. Plaintiff's house has not been enlarged since it was built, but a 14 by 18 foot storage room was added to the back of the garage in 1966. This addition was assessed at \$750 at that time.

15. The previous owners of 3933 S. Sycamore were Nancy and Derek Smith who purchased the property in 1986 for \$121,500. Under Article XIII A's provisions while the Smiths owned the property its "current assessed value" was based on the Smiths \$121,500 purchase price plus the 2% inflation adjustment.

16. The Smiths' 1988-89 tax bill for 3933 S. Sycamore included a "General Tax Levy" of \$1,264.08 (1% of \$121,500 plus an inflation adjustment for two years of \$4,908). The tax bill also included \$48.26 in "Voted Indebtedness" and \$71.12 in "Direct Assessments" for a total yearly real property tax bill of \$1,383.46 due in two installments of \$691.73.

17. When plaintiff purchased 3933 S. Sycamore from the Smiths, the real estate taxes for the first half of fiscal year 1988-89 (July through December of 1988) were prorated between plaintiff and the Smiths and were paid when the property was transferred.

18. In February of 1989, plaintiff received a Joint Consolidated Duplicate Tax bill from the Los Angeles County Tax Collector which listed the second installment of the 1988-89 fiscal year taxes on 3933 S. Sycamore at \$691.73. That bill continued to show the "current assessed value" and "taxable value" of the property based on the Smiths' 1986 purchase price of \$121,500 plus the 2% inflation adjustment.

19. In February or early March of 1989, plaintiff received a Notice of Assessed Value Change from the Los Angeles County Tax Assessor. Pursuant to Article XIII A's "welcome stranger" provision, because the property had changed hands, it had been reassessed to \$170,100. This increase of \$43,692 represented the difference between the \$170,000 price plaintiff paid for the property and the \$121,500 price paid for it by the prior owners plus the 2% annual inflation adjustment (plus an billing error of \$100).

20. In March of 1989, plaintiff received a Joint Consolidated Supplemental Tax bill for 3933 S. Sycamore from the Los Angeles County Tax Collector which reflected the reassessment of plaintiff's property mandated by Article XIII A's "welcome stranger" provision. The bill informed plaintiff that the annual tax total had been increased by \$453.60 (\$436.92 general tax levy and \$16.68 voted indebtedness). Because plaintiff had owned the property for only part of the 1988-89 fiscal year, the supplemental tax was prorated. The additional \$263.08 plaintiff was billed brought the general tax levy on 3933 S. Sycamore up to \$1,701 on an annualized basis. The bill stated that "This supplemental assessment is in compliance with Article XIII A of the California Constitution. It reflects the increase in your property taxes due to change in ownership occurring 11-01-88."

21. The first installment of this supplemental tax bill was due on April 30, 1989. The second installment was due August 31, 1989.

22. On April 10, 1989, plaintiff paid "under protest" the Joint Consolidated Tax bill of \$691.73 for the second installment of the 1988-89 taxes (based on the tax which would have been owed by the Smiths). At that time

plaintiff filed a verified Application for Reduction of Assessment with the County of Los Angeles Assessment Appeals Board appealing both the assessment reflected in the February Joint Consolidated Duplicate Tax bill and that reflected in the March Joint Consolidated Supplemental Tax bill. The principal ground cited by plaintiff for the Application for Reduction of Assessment was that the assessment violates the equal protection guarantees of the United States and California Constitutions. A copy of the Verified Application for Reduction of Assessment is attached as Exhibit A.

23. As indicated on the verified Application for Reduction of Assessment, the fair assessed value of plaintiff's property, taking into account the assessment of comparable properties in plaintiff's neighborhood, is \$30,000. Based on such an assessment, plaintiff's general tax levy for the tax year 1988-89 would have been \$300. Because plaintiff owned the property for only 8 months of that tax year, her tax bill based on such a general tax levy would have been \$200. Instead, plaintiff paid \$1096.05 in general tax levy taxes (\$842.64 based on the Joint Consolidated Tax bill for the entire year plus \$253.41 based on the Joint Consolidated Supplemental tax bill for 1988-89).

24. On April 28, 1989, plaintiff paid "under protest" the first installment of the Joint Consolidated Supplemental Tax bill (representing the additional tax owed because her purchase price for 3933 S. Sycamore exceeded the purchase price paid by the Smiths) and on August 28, 1989, plaintiff paid "under protest" the second installment of the Joint Consolidated Supplemental Tax bill.

25. On July 17, 1989, a hearing officer for the Los Angeles County Board of Assessment Appeals denied

plaintiff's Application for Reduction of Assessment and granted plaintiff's request that she be permitted to amend her verified Application for Reduction of Assessment to show that it was also a Claim for Refund.

26. On October 25, 1989, the Los Angeles County Board of Assessment Appeals denied plaintiff's Application for Reduction of Assessment and Claim for Refund.

27. No refund of the taxes paid by plaintiff, or any part thereof has been made to plaintiff or to anyone acting on her behalf.

UNEQUAL ASSESSMENT AND TREATMENT OF SIMILARLY SITUATED PROPERTIES

28. The 3800 and 3900 blocks of S. Sycamore Avenue contain 34 homes in addition to plaintiff's. The lot sizes for these 34 homes range from 7,600 to 10,400 square feet, and the size of the houses ranges from 1114 square feet (like plaintiff's house) to 2742 square feet. Most of these houses, like 3933 S. Sycamore, retain the uniform character of the original 1947 tract development.

29. Information contained in the files of the Los Angeles County Tax Assessor indicates that, pursuant to Proposition 13's "welcome stranger" assessment provision, gross disparities exist in the assessed value of these generally comparable properties. These gross disparities discriminate against plaintiff as a newcomer to the neighborhood. For example:

- a. A three bedroom, one bathroom single family house one block from the plaintiff's house is on a lot which is 900 square feet larger than plaintiff's lot, while the house contains square footage precisely equal to plaintiff's. It is assessed at \$35,820 based on its 1975 valuation. As a result, plaintiff's

neighbor, who lives in that house on property substantially similar to (but larger than) plaintiff's, is subject to a general tax levy of only \$358.20. In contrast, the general tax levy assigned to plaintiff's property (\$1,701) is almost five times higher; and

b. Another three bedroom, one bathroom single family house in plaintiff's block on S. Sycamore is on a lot which is 9240 square feet (1040 square feet larger than plaintiff's lot), while the house contains 1158 square feet (44 square feet larger than plaintiff's house). However, this larger house on a larger lot on the same block is assessed at \$36,107 based on its 1975 valuation, and the general tax levy is only \$361.07. Again, plaintiff's annual property tax is nearly five times that paid by her neighbor.

30. The property tax disparity between home buyers in plaintiff's neighborhood is even greater in 1989, increasing from almost 5 to 1 for 1988 home buyers, to 6 to 1 for 1989 home buyers.

31. In 1978, immediately after the adoption of Article XIII A, the tax disparity created by Article XIII A's "welcome stranger" provision between similar properties purchased in 1978 and those owned since 1975-76 was approximately 1.4 to 1. Today, in 1989, that disparity averages 5 to 1 in Los Angeles County, while in certain neighborhoods the post-Article XIII A disparity between property tax assessments for similarly situated properties is as great as 500 to 1, and more. This same pattern of discrimination against more recent property owners prevails throughout the state of California.

32. The chart below provides examples of the disparities found in neighborhoods in the following areas of Los Angeles County:

Property Tax Assessments Based on 1989 Purchase Price: Property Tax Assessments Based on 1975-76 Values	
Neighborhood	Values
Venice (Oakwood)	15:1
Malibu	12:1
Manhattan Beach	9:1
Santa Monica	9:1
Long Beach	8:1
Boyle Heights	7:1
Baldwin Hills	7:1
San Gabriel	6:1
Canoga Park	5:1
Glendale	5:1
Silverlake	5:1
Van Nuys	5:1
Compton	5:1
Watts	4:1

33. As property values increase in the future, the discriminatory impact of Article XIII A's "welcome stranger" provision, which requires the systematic undervaluation of comparable property, will magnify the current disparity between the tax assessments of similarly situated properties. For example, if the average annual rate of growth in the assessed value of properties in plaintiff's neighborhood since 1975 continues for ten more years, by 1999 the disparity in tax assessments for similarly situated properties will be approximately 20 to 1. Similarly, in the Oakwood neighborhood in Venice, the disparity will be approximately 100 to 1.

34. Article XIII A was promoted as a means to cut back on wasteful government spending while making California taxes fair, equal, and within the ability of taxpayers to pay.

35. Instead, Article XIII A has created an arbitrary system which assigns disparate real property tax burdens on owners of generally comparable and similarly situated properties without regard to the use of the real property taxed, the burden the property places on government, the actual value of the property or the financial capability of the property owner.

FIRST CAUSE OF ACTION

(FOR DECLARATORY RELIEF AGAINST
DEFENDANT JOHN J. LYNCH)

36. Plaintiff realleges and incorporates by reference paragraphs 1 through 35 of this complaint.

37. California Revenue & Taxation Code § 4808 specifies that a declaratory judgment action is available to a property taxpayer to challenge the constitutionality of an assessment within 30 days after the delinquency date of a property tax bill or any installment thereof.

SECOND CAUSE OF ACTION

(FOR REFUND OF PROPERTY TAXES AGAINST
DEFENDANT LOS ANGELES COUNTY)

38. Plaintiff realleges and incorporates by references paragraphs 1 through 35 of the Complaint.

39. Defendant Los Angeles County owes Plaintiff a refund of property taxes for the tax year 1988-89 in the amount of \$896.05.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

1. That the court declare that Article XIII A of the Constitution of California is invalid insofar as it requires that owners of similarly situated properties be taxed disparately;

2. That this court declare that the tax assessment of plaintiff's property at 3933 S. Sycamore at \$170,000 is invalid;

3. That defendant Los Angeles County be required to refund to plaintiff the sum of \$896.05 together with interest;

4. That this court grant plaintiff her costs and reasonable attorneys fees; and

5. That the Court grant such other and further relief as it finds just and proper.

DATED: October [25], 1989

CARLYLE W. HALL, JR.
MARY LOUISE COHEN
Hall & Phillips

_____/s/_____
Mary Louise Cohen
Attorneys for Plaintiff

* * *

[EXHIBIT A and VERIFICATION Omitted in Printing]

* * *

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
Civil No. C738781**

[TITLE Omitted in Printing]

[ORIGINAL FILED
November 16, 1989
COUNTY CLERK]

**NOTICE OF HEARING OF GENERAL DEMURRER;
GENERAL DEMURRER OF JOHN J. LYNCH TO
PLAINTIFF'S AMENDED COMPLAINT;
MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

Date: January 29, 1990

Time: 9:00 a.m.

Dept. 36

TO PLAINTIFF STEPHANIE NORDLINGER AND
HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 29, 1990, at 9:00 a.m., or as soon thereafter as the matter may be heard in Department 36 of the above-entitled court located at 111 North Hill Street, Los Angeles, California, Defendant John J. Lynch will demur to the amended complaint of Plaintiff Stephanie Nordlinger.

Defendant John J. Lynch hereby demurs to both causes of action of Plaintiff's amended complaint, pursuant to California Code of Civil Procedure, Sections 430.10(e) and 430.30, on the following grounds:

1. The first cause of action for declaratory relief pursuant to Revenue and Taxation Code Section 4808 fails to state facts sufficient to constitute a cause of action in that the original complaint on file in this action shows on its face that this action was not filed within 12 months

after a change in administrative regulations or statutory or constitutional law, as required by the penultimate paragraph of Section 4808.

2. The first and second causes of action fail to state facts sufficient to constitute a cause of action in that the California Supreme Court has determined that the provisions of Article XIII A of the California Constitution do not violate the equal protection guarantees of the state and federal constitutions. *Amador Valley Joint Union High School District v. State Board of Equalization* (1978) 22 Cal.3d 208.

WHEREFORE, Defendant prays that this demurrer be sustained without leave to amend, that Plaintiff take nothing by her complaint, and that Defendant recover the costs expended herein.

Dated: November 14, 1989

DE WITT W. CLINTON
County Counsel

DAVID L. MUIR
Principal Deputy County Counsel

By /s/
ALBERT RAMSEYER
Associate County Counsel
Attorneys for Defendant
John J. Lynch, in his capacity
as Tax Assessor for
Los Angeles County

* * *

[MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF Omitted in Printing;
CERTIFICATE OF SERVICE Omitted in Printing]

* * *

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Civil No. C738781

[TITLE Omitted in Printing]

[ORIGINAL FILED
December 28, 1989]
COUNTY CLERK]

**DECLARATION OF DAVID GOLD IN SUPPORT OF
- MOTION FOR ISSUANCE OF DECLARATORY
JUDGMENT PURSUANT TO CAL. REVENUE AND
TAXATION CODE § 4808, AND
FOR CLAIM FOR REFUND PURSUANT TO
REVENUE AND TAXATION CODE § 5097**

I, David Gold declare:

Background

1. In 1975, I graduated *cum laude* from Harvard University with a B.A. in Economics.

2. From February 1976 until the Summer of 1977, I was a Research Assistant at the Rand Corporation in Los Angeles. I participated in a major economic research project, the Los Angeles Department of Water and Power Peak Load Pricing Experiment. I was responsible for supervising efforts to investigate aberrational data. I also was involved in computer programming, interpreting economic data, and in data management.

3. From the Fall of 1977 until the Spring of 1982, I was a student at Harvard Law School where I pursued legal studies and was awarded a J.D. degree in 1982. During this time, I also spent the equivalent of two full years in graduate level studies in economics and applied statistics at the John F. Kennedy School of Public Policy.

4. From the Fall of 1983 through the Spring of 1984, I was a faculty research fellow at Harvard Law School, specializing in developing applications of economic analytic techniques to litigation negotiations.

5. In 1989, I established my own legal/economic consulting practice, and have worked on two projects for the California Attorney General's Office evaluating the use of economic models in litigation.

6. In July of 1989, in connection with *Nordlinger v. Lynch*, I was hired by the Center for Law in the Public Interest to perform an economic study (1) to evaluate the magnitude of property tax disparities between plaintiff's property at 3933 South Sycamore Avenue and similar neighboring properties acquired before 1975 and (2) to evaluate the magnitude of real property tax disparities in other Los Angeles County neighborhoods among properties acquired before 1975 and similarly situated properties acquired in 1989.

7. To perform both studies, I utilized the following sources: (1) Data purchased from Damar Corporation in Los Angeles. This data provides, for almost all residential properties in Los Angeles County, information including house and lot size, numbers of bedrooms and bathrooms, year of construction, date of acquisition, acquisition price and assessment. The data are provided by Damar through an on-line computer connection. The Damar data consist of information provided to Damar by a variety of sources, including the Los Angeles County Assessor's Office and the Los Angeles County Recorder's Office. In addition to the Damar data, I utilized: (2) 1989 Quarterly Real Estate and Construction Reports of the Real Estate Research Council of Southern California; and (3) consultations with professional appraisers at Curtis, Rosenthal and Associates. See Declaration of David Rosenthal.

Study of Plaintiff's Neighborhood

8. To determine the real property tax disparities in plaintiff's neighborhood, I first searched the Damar data for properties located within a two block, nine street radius of plaintiff's home at 3933 South Sycamore Avenue in Los Angeles County that (1) had homes containing 1100-1200 square feet (plaintiff's house is 1114 square feet); (2) had a similar number of rooms, bedrooms and bathrooms to plaintiff's home; (3) were the same age as plaintiff's home; and (4) had lots sized within roughly 1000 square feet of the size of plaintiff's lot.

9. From the properties that met these criteria, I found 19 that were assessed based on their 1975 values. (All references to 1975-based assessments herein incorporate the 2% annual increments provided for by Article XIII A). With one exception (the property located at 3871 Cloverdale), these homes all had assessments within a \$4,000 range. I removed the Cloverdale house from the sample, and averaged the assessments on the remaining houses to obtain a neighborhood average assessed value for this type of house if purchased before 1975. Attached as Exhibit A are the data describing these homes. The average assessed value was roughly \$37,600.

10. I then compared the \$37,600 average assessment on the selected pre-1975 owned properties to the \$170,000 assessment on 3933 South Sycamore Avenue to determine the rate of disparity between the real property taxes on plaintiff's property versus those assessed against similarly situated properties. Plaintiff paid taxes that were approximately five times higher than the average paid by the owners of these 18 neighboring properties.

11. To verify this ratio I searched for houses similar to plaintiff's in size, age, room configuration and lot

size that sold in 1989 but that bore 1975-based assessments prior to sale. Comparing the 1989 sale price to the prior assessment on the same property offers a useful check on assessment disparities. For example, the property at 3840 Burnside, which is identical to plaintiff's house in square footage and room configuration, was assessed at \$36,620 before it sold two months after plaintiff's for \$175,000; the assessment ratio between new and prior owners of the property was thus 5-to-1. Similarly, the property at 3837 Alsace, also very close in description to plaintiff's, was assessed at \$37,136 when it sold for \$170,000 three-and-one-half months before plaintiff's. This ratio also rounds to 5-to-1.

12. Next, I sorted houses with the aforementioned characteristics in descending order by date of sale, to check if price trends from 1975 to 1988 showed that assessments on new sales would have risen to five times those on pre-1975 properties. Taking into account the 2% annual increases allowed under Article XIII A, for assessment disparities to grow to a ratio of almost 5-to-1 prices would have multiplied by a factor of between 5 and 6 in the 13-year period. As data in Exhibit A show, prices for these homes rose from \$32,000 in 1975 to plaintiff's price of \$170,000 in 1988. (While prices rose more quickly in some periods than others, a look at the data shows that the \$170,000 figure for 1988 and the \$32,000 figure for 1975 are right in line with the trends. Indeed, the data also shows that increases in value during 1989 mean that disparities between the newest purchasers and pre-1975 purchasers have risen to 6-to-1 in the year since plaintiff's purchase.)

13. As a final and independent check on this 5-to-1 tax disparity in plaintiff's neighborhood, I arranged for a professional real estate appraiser to appraise

plaintiff's property as well as a property which was assessed one-fifth as high despite appearing from the pertinent characteristics to be slightly more valuable than plaintiff's. The appraiser, Manuel Estrada, appraised the property located at 3923 South Sycamore Avenue, directly next door to plaintiff. According to the Los Angeles County Assessor's Office, the house at 3923 South Sycamore contains one more bathroom than does plaintiff's, is 99 square feet larger than plaintiff's home and has a lot 800 square feet bigger.

14. As expected, Mr. Estrada appraised the neighboring property at a slightly higher value than plaintiff's despite its much lower assessment. He appraised the neighboring property at \$210,000, roughly six times its \$36,878 assessment. The plaintiff's property was appraised at \$205,000, already up from the \$170,000 assessment based on her purchase price from one year ago. See Declaration of Manuel Estrada at ¶¶ 5, 6. The general property tax on plaintiff's property for 1989 is \$1700. In contrast, the general tax on the slightly more valuable property at 3923 South Sycamore is \$368 (these figures do not include amounts to pay for voter approved indebtedness or direct assessments).

Study of Other Los Angeles County Neighborhoods

15. To perform the study of tax disparities in other Los Angeles County neighborhoods, I selected a cross-section of neighborhoods throughout Los Angeles County. For each neighborhood (defined by either a Thomas Guide grid location or an assessor's parcel number), I reviewed Damar data detailing all verified sales and all properties that have not changed ownership since 1975.

16. Once I had identified all such properties within a neighborhood, I selected sales from 1975 or before

and sales from 1989. I then obtained from the Damar data a description of each selected property. I sorted through the properties to find those that had approximately the same square footage, similar numbers of bedrooms and bathrooms, roughly equivalent lot size, and were about the same age. From this sort, I obtained a group of 1989 properties to compare to a group of similar properties assessed according to 1975 values.

17. In each neighborhood included in my study, I compared the tax assessment of the 1989 properties with at least five (but usually many more) 1975 properties. Current assessed values of properties that were sold in or before 1975 were available from Damar. To determine the assessed value of the 1989 sales, I utilized the 1989 sales price.

Attached hereto as Exhibit B are examples of the type of data compiled for each neighborhood studied.

18. I then took several steps to compensate for the possibility that the houses were not comparable due to differences in value that were not apparent from the Damar data. First, I averaged assessments over large numbers of houses to decrease the impact of any individual house differing in value in a way not readily apparent from the Damar data. Second, I made house by house assessment comparisons, pairing 1989 sales and pre-1975 sales that were particularly close in address, size, room configuration, and lot area. Third, I analyzed price trends to determine if any of the prices seemed significantly out of line with the trends.

19. For each neighborhood, I then checked my estimate of the disparity between assessments of similar properties by locating at least one property that had sold in 1975 and then again in 1988 or 1989. I compared that property's tax assessment before sale with its recent

sales price.¹ These houses offer a good way to demonstrate the difference between a 1975 base year assessment and a 1989 base year assessment, because their new assessments are being compared to the prior assessments on the very same property. In each case, the disparity between assessments before and after sale closely mirrored the disparities I found between similarly situated neighboring properties assessed according to a pre-1975 sales date and a 1989 sales date.

20. As a final cross check, I arranged for a professional real estate appraiser, Mr. Ken Kirshner, to perform a drive-by examination of (and to photograph) comparable properties. He went to most of the neighborhoods I analyzed, and compared one property that was assessed according to its 1975 assessed value to one assessed according to a 1989 sales price.² I supplied Mr. Kirshner with Damar data describing the property and showing the house and lot size, number of bedrooms and bathrooms, year of construction and assessed value. In each case, he evaluated these disparately assessed homes as comparable or judged that the property with the low, 1975-based assessment had superior attributes. See Declaration of Ken Kirshner ("Kirshner Declaration") at ¶ 5. Assessment differentials on most of these properties were double-checked using data directly from the Assessor's Office. See Exhibit A to Declaration of Catherine Rich ("Rich Declaration").

21. The following table summarizes the tax disparities I found by neighborhood. It tracks the two properties

¹In the case of a 1988 sale, the updated assessment was itself available. In such a case I estimated the 1989 assessment according to the price trend in the neighborhood.

²Mr. Kirshner did not visit the properties in Long Beach, San Gabriel or Van Nuys.

examined by Mr. Kirshner which I had chosen as typical examples of this type of property in the neighborhood, and compares the tax on the home sold in 1989 with that on the comparable home last sold before 1975. Note that both homes have roughly the same market value.

**TABLE I:
DIFFERENCE IN PROPERTY TAXES BETWEEN
COMPARABLE HOMES**

NEIGHBORHOOD	CURRENT MARKET VALUE	TAX ON NEW OWNER	TAX ON PRE-1975 OWNER	RATIO OF TAX ON NEW OWNER TO TAX ON PRE-1975 OWNER
VENICE	\$ 335,000	\$ 3,350	\$ 260	13:1
BEVERLY HILLS	3,800,000	38,000	3,230	12:1
MANHATTAN BEACH	630,000	6,300	680	9:1
SANTA MONICA	1,000,000	10,000	1,140	9:1
MAR VISTA	425,000	4,250	520	8:1
LONG BEACH	345,000	3,450	420	8:1
BALDWIN HILLS ¹ (View Park)	585,000	5,850	730	8:1
BOYLE HEIGHTS	129,000	1,290	170	8:1
GLENDALE	325,000	3,250	490	7:1
SAN GABRIEL	270,000	2,700	450	6:1
BALDWIN HILLS (Plaintiff's Area)	210,000	2,100	360	6:1
CULVER CITY ⁴	363,000	3,630	570	6:1
COMPTON	90,000	900	180	5:1
WATTS	80,000	800	160	5:1

¹More generally, tax disparities in this neighborhood fall into the 6-to-1 range. A typical pair of houses are those at 3635 Homeland, which recently sold for \$310,000, and the slightly larger neighboring property at 3657 Homeland which is assessed at \$51,000. See Exhibit B.

⁴The 1989 property is approximately \$10,000 more valuable than the otherwise comparable 1975 property. See Kirshner Declaration at ¶ 5.

The column labeled "Market Value" contains the price of the home sold in 1989 as recorded by the Los Angeles County Assessor's Office. This price represents the market value of both of these comparable homes. The column labeled "Tax on New Owner" is calculated by taking 1% of the market value. The column labeled "Tax on Pre-1975 Owner" is taken from the Assessor's Office and represents 1% of the 1975 assessment plus the 2% by which that assessed value is annually increased. (None of the tax figures includes taxes collected as "voted indebtedness" because that percentage varies throughout Los Angeles County.) The column labeled "Ratio" is determined by comparing the tax on the new owner to the tax on the pre-1975 owner. The ratios shown on these charts for the two selected properties were also representative of the larger sample I compared in each neighborhood, as discussed in paragraphs 16 through 19 above.

22. Not only are individuals who own comparable homes taxed at disparate levels, as each row in the Table shows, but properties that vary greatly in value are taxed at the same level. For example, my review of the Damar data showed that the owner of a 7800 square foot, seven bedroom residence on a prime 28,000 square foot Beverly Hills lot paid a general property tax equal to that paid by the owner of a 980 square foot Venice home on a 3100 foot urban lot. Similarly, the general tax levied against plaintiff's property is only a few dollars short of that paid by a pre-1976 owner of a \$2.1 million Malibu beachfront home.⁵

⁵The records of the Assessor's Office and Damar data indicate that until its recent sale for \$2,100,000, the property located at 31016 Broad Beach Road in Malibu was assessed at just under \$180,000. See Exhibit A to Rich Declaration.

Projections of Future Disparities

23. To determine what the range of property tax disparities would be between similarly situated properties in these same neighborhoods ten years from now, I estimated the 1999 sales prices for properties similar to those compared by the appraiser. To make this estimation, I determined the average annual rate of appreciation for these properties in each neighborhood from 1975 through 1989. I then applied this rate to the 1989 sales prices in each neighborhood to determine a projected 1999 value.

24. Using this method, I estimated that by 1999 property tax disparities between comparable properties will be as shown in the final column of Table 2, below:

TABLE 2:
RATE AT WHICH TAX DIFFERENTIALS HAVE GROWN
SINCE THE ARTICLE XIII A BASELINE YEAR, AND
PROJECTED DIFFERENTIALS IN 10 MORE YEARS

	AVERAGE ANNUAL GROWTH RATE OF HOME VALUES	AVERAGE ANNUAL GROWTH RATE OF TAX DIFFEREN- TIALS	CURRENT TAX DIFFEREN- TIALS	YEARS TAKEN FOR TAX DIFFEREN- TIALS TO DOUBLE	PROJECTED TAX DIFFEREN- TIALS 10 YEARS FROM NOW
VENICE	22.5%	20.1%	13:1	3.8	81:1
BEVERLY HILLS	21.1%	19.4%	12:1	3.9	71:1
SAN GABRIEL	18.3%	16.0%	8:1	4.7	35:1
PLAINTIFFS NEIGHBORHOOD	16.0%	13.7%	6:1	5.4	22:1
WATTS	14.4%	12.2%	5:1	6.0	16:1

The column labeled "Average Annual Growth Rate of Homes Values" represents the average annual growth in value from 1975 to 1989 for the properties examined by the appraiser (as well as those properties I found to be similar to them); the column labeled "Average

Annual Growth Rate of Differentials" adjusts the growth rate shown in column 1 to reflect the annual 2% increase in property assessments allowed by Article XIII A; the column labeled "Current Differentials" is taken from Table 1 in paragraph 21 above representing current assessment disparities in the neighborhood; the "Years Taken For Tax Differential to Double" column shows how quickly assessment differentials have doubled and would continue to double when growing at the rate shown in column 2; and the column labeled "Projected Differentials in 10 Years" is calculated by applying the "Average Annual Growth Rate of Differentials" figure from column 2 for 10 years to the Current Differentials in column 3.

The explosive nature of growth rates makes a differential that grows to 10-to-1 after 13 years explode to 100-to-1 in 26 years. The final column of the Table shows that only ten years from now, differentials well over 50-to-1 will be common if values continue to rise at the annual rate they have risen since 1975. Moreover, even in the unlikely event that the growth rate were to plummet to 9-1/2%, a typical return on a very conservative utility bond investment well below the appreciation rate that has prevailed even in the Watts sample since 1975, assessment differentials would still double every ten years. For example, in Venice, where today's differential is 13-to-1, the differential would increase to 26-to-1 in just ten years even under this extremely conservative assumption.

25. A sampling of Damar data on commercial and industrial properties and on residential income properties (apartment buildings) reveals disparities parallel to those found in residential properties. For example, a survey of office buildings on a small stretch of Wilshire Boulevard yielded 6-to-1 assessment

disparities between towers similar in age, location and square footage, and also revealed recent resales being reassessed at six times their prior assessment.

Additionally, a preliminary survey of empty lots disclosed lots assessed at less than 1/25th of their value. Based on my experience with the residential properties, this fraction appears reasonable, because land values have risen much faster than building values.

A preliminary review of Westwood area apartment buildings shows assessment disparities of roughly 10-to-1 between new and longtime owners of properties similar in size, location, and year of construction.

26. In 1978, immediately after Proposition 13 took effect, the property tax on a typical newly purchased Los Angeles County home was \$686.00.⁶ If that home still remains in the same hands in 1989, the property tax has fallen by 38% in inflation adjusted terms.⁷ The reason that the inflation adjusted taxes on longtime owners continue to fall is because Article XIII A only allows a 2% annual increase in assessments. Attached

⁶The median price of an existing home in Los Angeles County is \$225,000. Unpublished data from California Association of Realtors. See Declaration of Robyn Phillips Footnote 1. In 1978 its price would have been roughly \$68,600. (Calculated from the price index in Table 1 of Declaration of Robyn Phillips. Its general property tax levy would have been 1% of \$68,600, or \$686.00.

⁷The current tax equals the 1978 tax (\$686.00) increased by 2% per year, for a cumulative increase of just 24.3% to \$852.00. By contrast, general price levels for all goods and services in the greater Los Angeles area have risen almost 100% since 1978. See Exhibit C (Real Estate Research Council Report.) Had the original tax kept pace with inflation, in 1989 dollars, the original tax would be equal to \$1372.00. The actual 1989 tax of \$853.00 is 38% below the inflation adjusted original tax.

as Exhibit C is a true and correct copy of the "Cost of Housing Indexes," which contains the Bureau of Labor Statistics Consumer Price Index for Los Angeles, as published by the Real Estate Research Council of Southern California. As Exhibit C shows, overall inflation has exceeded 2% every year since 1978 except one, in most years by a wide margin. In every year that assessments have increased more slowly than inflation, the longtime owner has received a tax cut in inflation adjusted terms.

27. Attached as Exhibit D is a true and correct copy of Table 2-11, "Reasons for Move and Choice of Current Residence-Occupied Units," from the American Housing Survey for the Los Angeles-Long Beach Metropolitan Area in 1985.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this [28] day of December, 1989, at Los Angeles, California.

_____/s/_____
David Gold

* * *

[CERTIFICATE OF SERVICE OMITTED]

* * *

[EXHIBIT A]

The tables in Exhibits A and B provide examples of the data used to estimate assessment differentials. Assessment columns have been highlighted with arrows. The reference information below is intended to answer questions that may arise while examining the tables.

Column Headings Signify the following:

"MO" and "YR" refer to the date when the current owner purchased the house.

"PRICE" was the purchase price.

"ASSESSMENT" is the current assessment.

"BLDG AREA" represents the size of the house in square feet.

"RMS" indicates the number of rooms, "BDR" the number of bedrooms, and "BTH" the number of full sized bathrooms.

"LOT AREA" is listed in square feet.

"YR" is the year when the house was constructed.

The following information sometimes appears:

"N/A" signifies data that is not available or not applicable.

"U" signifies data that is unavailable.

"*" signifies that an entry has too many digits to fit into its field. For example, many of the homes in Beverly Hills had 10 or more rooms, too large a number of fit into the 1 digit "RMS" field.

In some instances data that is not available appears as a "0" (zero).

Information on some houses is duplicated as a result of the sorting techniques used.

Assessments on 1989 sales have been estimated from sale price.

[Source: Damar Corporation]
BALDWIN HILLS (Plaintiffs Neighborhood)

MOYR	ADDRESS	PRICE	ASSESS- MENT	BLDG AREA	R S	B D	B T	LOT AREA	YR BLT
10 89	3915 S BURNSIDE	209,000	209,000	1114	5	3	2	7296	47
08 89	3851 RIDGELEY D	210,000	210,000	1106	5	3	1	7650	47
08 89	3808 CLOVERDALE	200,000	200,000	1153	5	3	1	7770	47
06 89	3831 S SYCAMORE	216,000	216,000	1161	5	3	1	8550	47
01 89	3840 BURNSIDE A	175,000	175,000	1114	5	3	1	8000	47
11 88	3933 S SYCAMORE	170,000	170,100	1114	5	3	1	8200	47
12 87	3842 RIDGELEY D	160,000	163,200	1188	5	3	1	7800	47
08 87	3835 RIDGELEY D	135,000	137,700	1114	6	3	1	7496	47
04 87	3826 BURNSIDE A	130,000	135,251	1114	5	3	1	7700	47
05 86	3828 DUNSMUIR A	118,000	100,577	1186	5	3	1	7150	47
06 85	3810 HAUSER BL	105,000	113,653	1186	5	3	1	7020	47
06 84	3842 S SYCAMORE	118,000	130,278	1188	5	3	1	9010	47
03 84	3860 ALSACE AV	106,000	117,028	1151	5	3	1	8804	47
07 83	3877 S CLOVERDA	100,000	110,403	1188	5	3	2	9176	47
11 82	3912 BURNSIDE A	95,500	107,544	1186	5	3	1	7900	47
09 77	3860 CLOVERDALE	55,000	67,706	1186	5	3	1	9610	47
08 77	3839 DU RAY PL	50,000	61,549	1134	5	3	1	7040	47
11 75	3854 ALSACE AV	37,000	46,357	1168	5	3	1	8999	47
07 75	3836 RIDGELEY D	32,500	41,617	1134	5	3	1	5500	47
07 75	3851 S SYCAMORE	32,000	40,974	1134	5	3	1	9140	47
04 75	3811 RIDGELEY D	33,500	46,08	1186	5	3	1	7620	47
09 74	3880 CLOVERDALE	N/A	37,745	1186	5	3	1	8100	47
04 71	3927 BURNSIDE A	N/A	36,832	1151	5	3	1	8000	47
09 70	3815 COCHRAN AV	N/A	38,010	1188	5	3	1	7150	47
01 70	3913 RIDGELEY D	N/A	38,792	1188	5	3	1	7800	47
03 69	3903 S SYCAMORE	N/A	36,828	1158	5	3	1	9405	47
11 68	3842 ALSACE AV	N/A	39,967	1193	5	3	1	8780	47
05 68	3831 COCHRAN AV	N/A	36,441	1114	5	3	1	7550	47
09 67	3868 S SYCAMORE	N/A	35,783	1114	5	3	1	9100	47
03 66	3885 ALSACE AV	N/A	38,268	1158	5	3	1	9248	47
01 66	3915 S SYCAMORE	N/A	36,174	1151	5	3	1	9260	47
12 65	3926 RIDGELEY D	N/A	36,832	1106	5	3	1	7100	47
10 64	3871 CLOVERDALE	N/A	44,748	1186	5	3	1	9052	47
09 64	3823 ALSACE AV	N/A	36,436	1114	5	3	1	9200	47
08 63	3836 ALSACE AV	N/A	37,484	1151	5	3	1	8500	47
09 47	3831 DUNSMUIR A	N/A	36,699	1106	5	3	1	7150	47
05 47	3830 ALSACE AV	N/A	39,182	1134	5	3	1	9000	47
U.	3941 RIDGELEY D	N/A	39,443	1157	5	3	1	8000	47
U.	3817 BURNSIDE A	N/A	36,570	1158	5	3	1	7100	47
U.	3945 RIDGELEY D	N/A	39,790	1114	5	3	1	7600	47

[EXHIBIT B]

[Source: Damar Corporation]

MO YR	ADDRESS	PRICE	ASSESS- MENT	BLDG AREA	R S	B D	B T	LOT AREA	YR BLT
09 89	914 NOWITA PL	302,000	302,000	672	4	1	1	3400	22
08 89	720 NOWITA PL	290,000	290,000	483	3	2	2	3400	23
08 89	1622 CRESCENT	289,000	289,000	652	4	2	1	3092	30
07 89	832 NOWITA PL	302,000	302,000	510	3	1	1	3485	21
05 89	734 AMOROSO P	330,000	330,000	700	4	2	1	3150	29
05 89	820 SUPERBA A	283,600	283,600	0	0	0	0	3327	89
04 89	726 NOWITA PL	271,000	271,000	632	3	1	1	3400	21
03 89	821 AMOROSO P	103,000	291,500	786	4	2	1	3330	21
02 89	923 NOWITA PL	335,000	335,000	726	4	2	1	0	23
02 89	714 MARCO PL	317,500	329,000	799	4	2	1	2003	59
02 89	931 MARCO PL	295,000	295,000	512	3	1	1	3600	24
10 88	733 MARCO PL	335,000	335,000	665	4	2	1	3600	21
10 88	910 MARCO PL	185,000	185,000	624	4	1	1	3150	23
09 88	1909 SHELL AV	284,000	284,000	780	2	1		2744	21
09 88	735 AMOROSO P	283,000	283,000	782	4	2	1	3150	27
08 74	910 SUPERBA A	N/A	53,013	726	4	2	1	3150	23
05 74	924 NOWITA PL	N/A	26,119	720	4	2	1	3400	48
05 74	1707 OAKWOOD	N/A	28,861	768	4	2	1	3400	49
09 72	842 MARCO PL	N/A	28,467	695	3	1	1	3600	21
06 72	732 MARCO PL	N/A	25,853	720	4	2	1	3600	48
05 72	737 NOWITA PL	N/A	28,208	728	4	2	1	3400	48
02 72	838 MARCO PL	N/A	27,685	664	3	2	1	3330	20
02 72	912 AMOROSO P	N/A	31,866	768	4	2	1	3600	23
01 72	1509 WASHINGT	N/A	53,293	687	0	1	1	2613	15
11 71	1620 CRESCENT	N/A	21,545	664	5	2	1	2352	23
07 71	837 VENEZIA A	N/A	27,165	628	4	2	1	3200	22
11 69	1916 SHELL AV	N/A	22,589	774	4	2	1	2178	23
02 69	918 AMBROSO P	N/A	31,999	768	4	2	1	3600	48
05 67	726 SUPERBA A	N/A	23,765	528	3	1	1	3150	38
10 66	854 SUPERBA A	N/A	27,553	680	3	1	1	3330	20
11 65	2012 LINDEN A	N/A	29,382	724	4	2	1	3600	22
11 62	733 SUPERBA A	N/A	28,078	720	4	2	1	3400	24
10 58	823 AMOROSO P	N/A	28,730	773	5	2	1	3330	21
00 58	720 SUPERBA A	N/A	25,594	776	4	1	1	3150	22
09 50	725 NOWITA PL	N/A	24,678	694	4	2	1	2975	24
05 48	729 NOWITA PL	N/A	25,988	660	4	1	1	3400	21
U.	833 SUPERBA A	N/A	29,254	742	4	2	1	3145	35
U.	714 NOWITA PL	N/A	27,294	760	4	1	1	3145	26
U.	2127 LINDEN A	N/A	29,119	660	0	1	1	3920	52

[Source: Damar Corporation]
BEVERLY HILLS

MO YR	ADDRESS	PRICE	ASSESS- MENT	BLDG AREA	R B B			YR BLT
					MD	T	LOT	
10 89	716 N ELM DR	3,000,000	3,000,000	5347	* 6	7	20185	28
08 89	710 N ELM DR	3,800,000	3,800,000	6283	* 6	8	21290	25
06 89	712 N ELM DR	3,600,000	3,600,000	8394	* 7	5	20860	73
07 74	701 ARDEN DR	N/A	326,618	6780	* 8	7	25900	32
03 74	722 N MAPLE DR	N/A	428,433	8721	* 8	6	24930	30
06 73	721 N MAPLE DR	N/A	322,697	7756	* 7	7	28148	33
05 73	712 N PALM DR	N/A	513,620	6190	* 7	4	23130	26
09 72	715 N MAPLE DR	N/A	346,213	7488	* 7	4	27610	27
09 72	712 HILLCREST R	N/A	364,505	6468	* 7	7	24410	37
05 72	807 ALPINE DR	N/A	607,151	6724	* 7	7	36198	24
03 68	627 ARDEN DR	N/A	295,913	5942	* 7	5	20870	30
08 67	707 ARDEN DR	N/A	359,593	6604	* 7	5	24470	29
08 67	724 N ELM DR	N/A	341,870	5919	* 6	5	25440	27
09 66	626 HILLCREST R	N/A	304,404	5178	* 6	6	19520	27
07 65	720 FOOTHILL RD	N/A	444,200	9446	* 8	7	39800	24
05 63	808 FOOTHILL RD	N/A	350,786	6904	* 7	6	25230	29
03 61	806 FOOTHILL RD	N/A	315,511	6022	* 7	5	24770	27
04 60	705 ARDEN DR	N/A	329,881	6581	* 7	5	24450	27

* * *

[Pages 3-15 (Damar Corporation printouts of similar
disparities in Los Angeles County neighborhoods)
of EXHIBIT B Omitted in Printing;

EXHIBIT C Omitted in Printing;

EXHIBIT D Omitted in Printing;

* * *

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Civil No. C738781

[TITLE Omitted in Printing]

[ORIGINAL FILED
December 28, 1989]
COUNTY CLERK]

**DECLARATION OF ROBYN S. PHILLIPS IN
SUPPORT OF MOTION FOR ISSUANCE OF
DECLARATORY JUDGMENT PURSUANT TO
CAL. REVENUE AND TAXATION CODE § 4808,
AND FOR CLAIM FOR REFUND PURSUANT
TO REVENUE AND TAXATION CODE § 5097**

Date: January 29, 1990

Time: 9:00 a.m.

Dept. 36

I, Robyn Phillips, declare:

1. I am an Assistant Professor with the Department of Economics at the University of California, San Diego, and I am also on the faculty of the Urban Studies and Planning Program at the University. I have held these positions since 1982.

2. I have a Ph.D. in Urban Planning from Harvard University and a Masters in City and Regional Planning from Harvard University.

3. I have ten years of experience in statistical and economic analysis with a focus on urban housing trends and the relationship of housing economics to housing choices.

4. Attached as Exhibit A is a copy of my current Curriculum Vita which accurately lists my professional

experience and the publications, research reports, and other scholarly papers I have authored.

5. In September of 1989, I was hired by the Center for Law in the Public Interest to compare, for each year from 1975 forward, the average assessed value for existing single family homes in Los Angeles County.

6. My first analysis was undertaken to determine, for a typical house, how far below market value its assessed value is likely to be, depending on its year of purchase. Thus, the following chart estimates for that typical house how far its current assessment would diverge from market value if its current owner purchased it in 1975, or instead in 1976, and so on through 1989.

Table 1:

Estimate of Average Ratio of Current Assessed Value to Market Value for Existing Single Family Homes in Los Angeles County by Year Acquired

Year Acquired	Price Index ¹	Current Assessed Value ²	Ratio of Assessed Value to Market Value ³
1975	100	124	.20
1976	118	147	.23
1977	154	191	.30
1978	192	239	.38
1979	234	285	.45
1980	286	342	.54
1981	314	368	.58
1982	320	368	.58
1983	320	360	.57
1984	330	364	.58
1985	339	367	.58
1986	361	383	.61
1987	406	422	.67
1988	481	491	.78
1989	630	630	1.0

¹This column reflects the annual average percentage increase in the price of houses in Los Angeles County. The data for this column were taken from the 1989 Quarterly Real Estate and Construction Report of the Real Estate Research Council of Southern California at California State Polytechnic University ("the Report") and earlier reports. To compile the Report, professional appraisers reassess the same large sample of Los Angeles County homes twice each year. Based on my experience with and knowledge of statistical analysis, in my opinion, the methodology employed in the Report is very sound for establishing price trends in the County. I cross-checked the accuracy of the trends reflected in the Report by comparing those trends to data supplied annually by the California Association of Realtors on the median price of existing homes in Los Angeles County. I am very familiar with the Association of Realtors data, have worked with it over the years, and based on my experience believe these data are sound and reliable. I further cross-checked the accuracy of the price trend in the Report by comparing it to the 1985 American Housing Survey for the

7. The first entry in the final column of this Table signifies that a typical house purchased in or before 1975 is now assessed at 20% of its current market value. A house purchased in 1980 is typically assessed at 54% of its market value. Only houses purchased in late 1989 would now be assessed at 100% of market value.

8. Using the ratios of assessed value to market value, I then determined an estimate of the weighted average ratio of assessed value to market value for all single family homes in Los Angeles County in 1989. My analysis revealed that, for all single family homes in Los Angeles County in 1989, the average assessed value is 44% of market value. The following table shows the development of this estimate.

Los Angeles/Long Beach Metropolitan Area prepared by the United States Department of Housing and Urban Development and the United States Department of Commerce ("the Survey"). This Survey relays information provided by homeowners about the value of their homes, the date of purchase and property taxes paid. I am very familiar with this data and have worked with it frequently. Based on my experience with the data and my experience in researching and analyzing housing and economic issues, it is my opinion that the Survey data reliably record housing values and property taxes.

²This column was developed by increasing the Price Index figure in column 1 by 2% for each year after the base year to allow for the annual 2% increases provided for by Article XIII A. This column reflects the 1989 assessed value of a house purchased in the base year.

³This column was developed by taking the current assessed value corresponding to houses purchased in each base year (column 2) and dividing it by 630, which is the 1989 market value in the price index.

Table 2:

Estimate of Average Assessment Ratio, 1989

Year Acquired	% Parcels Held in 1989 ⁴	Assessment Ratio ⁵	Weighted Average ⁶
Before 1976	38.0	.20	.44
1976-78	11.0	.30	
1979-80	7.0	.50	
1981-85	18.0	.58	
1986	6.0	.61	
1987	7.0	.67	
1988	8.0	.78	
1989	5.0	1.0	

To make this determination, I first estimated what percentage of homes owned in 1989 were purchased prior to 1976, and what percentage were purchased in each subsequent year. Details of this calculation appear in footnotes four through six. I then assigned a ratio of assessment to market value for various years of purchase based on the final column of Table 1. Finally I computed an average overall ratio of assessment to market value by weighing the assessment

⁴This column was derived by: (1) locating the pre-1976 number directly in the Roll Release of the Los Angeles County Assessor's office; a copy of this report is attached as Exhibit B, and (2) estimating all other figures using information on year of purchase from the 1985 American Housing Survey, information on resale volume (from the California Association of Realtors) and information on mobility rates (from the Survey) as well as using my judgment based on my experience and training in urban real estate economics.

⁵This column is derived from the final column in Table 1.

⁶The average assessment ratio of .44 is a weighted average which weights each period's assessment ratio (column 3) by the percentage of homeowners who purchased their current homes in that period (column 2). In computational terms, each row entry in column 2, expressed as a decimal, is multiplied by the row entry in column 3. The products that result are all added together to get the average assessment ratio.

ratio for each period by the percentage of homes last acquired in that period.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this [23] day of December, 1989 in [Sierra City], California.

_____/s/_____
Robyn Phillips

* * *

[CERTIFICATE OF SERVICE Omitted in Printing;

EXHIBIT A Omitted in Printing]

* * *

[EXHIBIT B]

From the Office of
Los Angeles County Assessor
JOHN J. LYNCH

Hall of Administration
500 W. Temple Street, Room 320
Los Angeles, CA 90012-2770

Contact:
Robert Knowles
Public Information

7/31/89

2ND HIGHEST PROPERTY ROLL VALUATION INCREASE IN SEVEN YEARS

Los Angeles County Assessor John J. Lynch today (Monday) unveiled a record \$369.5 billion taxable property roll for 1989-90—representing an 11.9 percent rise in the value of land and buildings over the previous year.

The 1989-90 roll (exclusive of public utility values which are set by the state Board of Equalization) was actually \$385.9 billion. That figure, however, included \$16.4 billion in properties exempt from taxation.

The taxable roll should produce approximately \$467 million (based on an average tax rate of 1.19 percent) in new revenue for cities, schools, special districts, community development agencies and county government over 1988-89, Lynch told some 800 assessor employees gathered in the Hall of Administration for the unveiling of the roll.

"It is not only Southern California's booming economy and tremendous home sales that accounted for this increase," Lynch said. "The motivation shown

by the 1,600 employees of this department in putting properties on the roll, in the spirit of fairness required by Proposition 13, is no less impressive."

Board of Supervisors Chairman Ed Edelman also praised the efforts of Lynch's department in overseeing the valuation of 2.2 million parcels.

As required by state law, Lynch then signed the roll and turned the document over to Auditor-Controller Mark Bloodgood, who will compute the taxes owed by each property owner. Also on hand was Treasurer-Tax Collector Sandra Davis, who will mail out the bills.

County government alone depends on the property tax for 22 percent of its revenue, Lynch noted.

Also attending the ceremony were Chief Administrative Officer Richard Dixon, Registrar-Recorder Charles Weissburd and representatives of the Los Angeles County Employees Association, Local 660, and the California Association of Professional Employees (CAPE).

Once again, the bulk of valuation increases was realized through the sale or transfer of property, accounting for \$23.5 billion of the roll increase (59 percent).

New construction accounted for \$6.1 billion of the increase (15.3 percent) and long-time owners of property accounted for another \$6.2 billion (15.6 percent) as part of the 2 percent inflationary factor required by Prop. 13.

Business personal property and fixtures were responsible for \$2.9 billion (7.1 percent) of the increase.

As always, Los Angeles City posted the highest valuations—equal to 40 percent of the roll—with a \$147.6 billion total, for a \$15.5 billion (11.8 percent) increase over the previous year.

Again coming in second was Long Beach—5 percent of the roll—with a \$17.1 billion total for a \$1.2 billion (7.5 percent) increase.

Palmdale, however, was again the county's fastest growing city, posting a 29.2 percent increase in value for a \$2.5 billion total, primarily because of residential construction made possible by the low cost of land there.

12/31/89-12

[Source: Los Angeles County Assessor]
FACTORS CAUSING 1989 VALUATION CHANGES
FOR LOS ANGELES COUNTY
 (Exclusive of Public Utility Valuations) (1)
 (Values in Billions)

CURRENT ROLL VALUE CHANGE

	<u>1988</u>	<u>1989</u>	<u>\$ Change</u>	<u>% Change</u>
Local Roll Value				
Before Exemptions	\$ 346.022	\$ 385.912	\$ 39.890	11.5%
Less All Exemptions	\$ 15.794	\$ 16.386		
Net Local Roll Value	\$ 330.228	\$ 369.526	\$ 39.298	11.9%

<u>FACTORS CAUSING CHANGE</u>	<u>CHANGE IN DOLLARS</u>	<u>% OF TOTAL CHANGE</u>
Properties Sold and/or Transferred	\$23.525	59.0%
New Construction	6.105	15.3%
2% Inflation Adjustment (Prop. 13)	6.213	15.6%
Business Personal Property and Fixtures	2.853	7.1%
Other Additions (2)	1.194	3.0%
TOTAL INCREASE TO THE 1989 LOCAL ROLL	\$ 39.890	100.0%
INCREMENTS TO PRIOR ROLLS (3)	7.414	
TOTAL VALUE ADDED DURING THE 1989 ASSESSMENT YEAR	\$ 47.304	

- (1) Public Utility assessments are made by the State Board of Equalization. Their values should be available by the end of August.
 (2) Value increases due to value restorations, newly created parcels, possessory interests, oil and water rights.
 (3) Reduction of backlogs for tax years 1984 thru 1988.

[Source: Los Angeles County Assessor]
1989 ASSESSED VALUATION
(EXCLUSIVE OF PUBLIC UTILITY VALUATIONS)
LOS ANGELES COUNTY (1)

<u>VALUATIONS</u>	<u>1988</u>	<u>1989</u>	<u>AMOUNT OF CHANGE</u>	<u>% OF CHANGE</u>
Land	\$130,376,528,984	\$150,188,734,528		
Bldgs. and Structs.	178,336,433,128	195,561,205,770		
Bus. Pers. Prop. and Fixtures	37,309,065,855	40,162,418,065		
GROSS TOTAL	\$346,022,027,967	\$385,912,358,363	\$39,890,330,396	11.5%
LESS EXEMPTIONS				
Church, Welfare etc. (2)	\$7,794,052,980	\$ 8,519,930,369		
Revenue Producing Valuations	\$338,227,974,987	\$377,392,427,994	\$39,164,453,007	11.6%
Homeowner (3)	\$ 8,000,429,333	7,865,962,750		
NET TOTAL REVENUE PRODUCING VALUATIONS (4)	\$330,227,545,654	\$369,526,465,244	\$39,298,919,590	11.9%

1989 Allocation Of Taxable Parcels

<u>No. of SFR Parcels</u>	<u>No. of Res Inc Parcels</u>	<u>No. of C.I. Parcels</u>	<u>No. of Total Parcels</u>
1,696,783	243,934	224,691	2,165,408
Business Assessments: Personal Property and Fixtures			320,988
TOTAL			2,486,396

- (1) The assessed values do not include State Board of Equalization valued properties.
 (2) Exemptions not reimbursed to local governments by the State of California.
 (3) Exemptions reimbursed to local governments by the State of California.
 (4) Valuations on which revenue is collected by Los Angeles County.

* * *

[Pages 5-6 of EXHIBIT B Omitted in Printing]

* * *

[Source: Los Angeles County Assessor]

LOS ANGELES COUNTY NET ASSESSED VALUATION (1)

(Exclusive of Public Utility Valuation)

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>
L.A. County Net Total:	\$109,350	\$134,346	\$150,111	\$169,968	\$190,271	\$203,723	\$223,790	\$245,219	\$266,543	\$298,703	\$330,228	\$369,526
Increase in Value:		\$ 24,996	\$ 15,765	\$ 19,857	\$ 20,303	\$ 13,452	\$ 20,067	\$ 21,429	\$ 21,324	\$ 32,160	\$ 31,525	\$ 39,298
Percent Change:		22.9%	11.7%	13.2%	11.9%	7.1%	9.9%	9.6%	8.7%	12.1%	10.6%	11.9%

(1) All values are exclusive of all exemptions.

[Source: Los Angeles County Assessor]
LOS ANGELES COUNTY
DISTRIBUTION OF VALUE BY PROPERTY TYPE
TOTAL COUNTY VALUATIONS LOCAL ROLL (1)
(Values in Billions)

YEAR	TOTAL ROLL MARKET VALUE	SFR VALUE	% OF TOTAL ROLL	RES-INC VALUE	% OF TOTAL ROLL	COM-IND VALUE	% OF TOTAL ROLL	OIL RIGHTS VALUE	% OF TOTAL ROLL
1969	\$ 65.6	\$ 28.8	43.9%	\$ 8.4	12.8%	\$ 28.4	43.3%	\$ N/A	N/A
1970	69.2	30.0	43.3%	9.2	13.4%	29.1	42.1%	.9	1.2%
1971	72.0	30.8	42.8%	9.6	13.3%	30.9	42.9%	.7	1.0%
1972	75.2	32.4	43.1%	10.4	13.8%	31.8	42.3%	.6	.8%
(2) 1973	72.8	28.4	39.0%	10.8	14.8%	33.1	45.5%	.5	.7%
1974	76.8	30.0	39.1%	11.2	14.6%	34.6	45.1%	1.0	1.2%
1975	83.2	33.2	39.9%	11.2	13.5%	37.7	45.3%	1.1	1.3%
1976	97.2	40.8	42.0%	15.2	15.6%	40.0	41.2%	1.2	1.2%
1977	105.6	44.8	42.4%	16.4	15.5%	43.3	41.0%	1.1	1.1%
1978	109.2	45.2	41.4%	16.0	14.7%	46.8	42.8%	1.2	1.1%
(3) 1978 adj.	119.2	52.0	43.6%	18.0	15.1%	49.2	41.3%	N/A	N/A
1979	134.4	60.4	44.9%	20.4	15.2%	52.4	39.0%	1.2	.9%
(4) 1980	150.0	71.2	47.5%	22.8	15.2%	53.2	35.5%	2.8	1.8%
1981	170.1	82.0	48.2%	24.7	14.5%	60.3	35.5%	3.1	1.8%
1982	190.3	90.8	47.7%	26.4	13.9%	70.0	36.8%	3.1	1.6%
1983	203.7	97.2	47.7%	27.6	13.6%	75.1	36.9%	3.8	1.8%
1984	223.8	105.9	47.3%	29.8	13.3%	84.3	37.7%	3.8	1.7%
1985	245.2	115.7	47.2%	32.7	13.3%	93.4	38.1%	3.4	1.4%
1986	266.6	125.5	47.1%	35.7	13.4%	102.7	38.5%	2.7	1.0%
1987	298.7	138.8	46.5%	40.6	13.6%	117.0	39.1%	2.3	.8%
1988	330.2	153.2	46.4%	46.0	13.9%	128.8	39.0%	2.2	.7%
1989	\$ 369.5	\$175.1	47.4%	\$ 51.7	14.0%	\$141.0	38.2%	\$1.7	.4%

NOTE:

(1) All values are exclusive of all exemptions.

(2) 1973-Homeowners exemption rose from \$750 to \$1750.

(3) 1978 Adj. - Represents market value after transfer and new construction changes for 1975-1978 were added to the original 1978 roll.

(4) 1980 - Business inventory 100% exempt - \$2.3 billion increase in C-1 base year values.

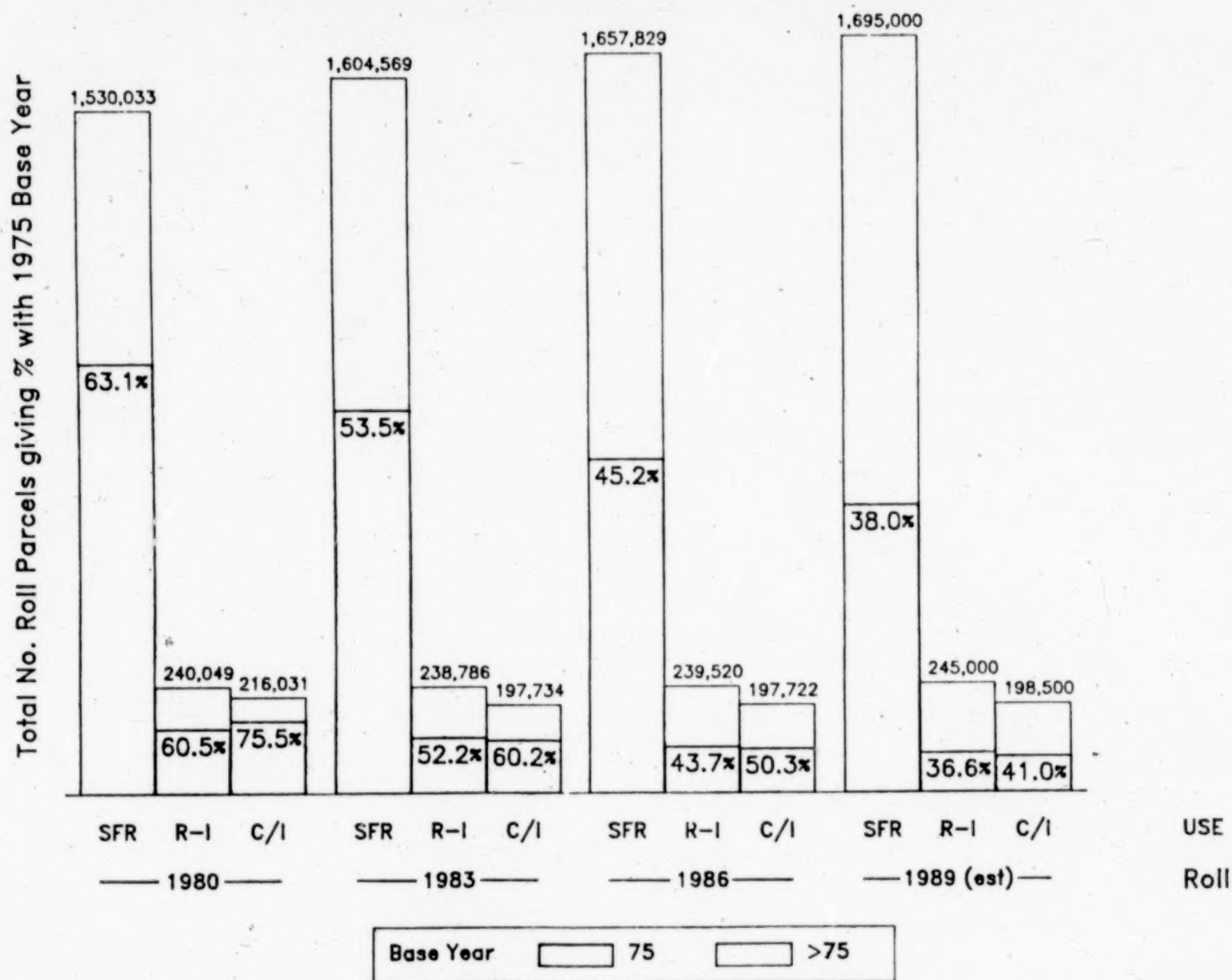
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[Pages 9-17 of EXHIBIT B Omitted in Printing]

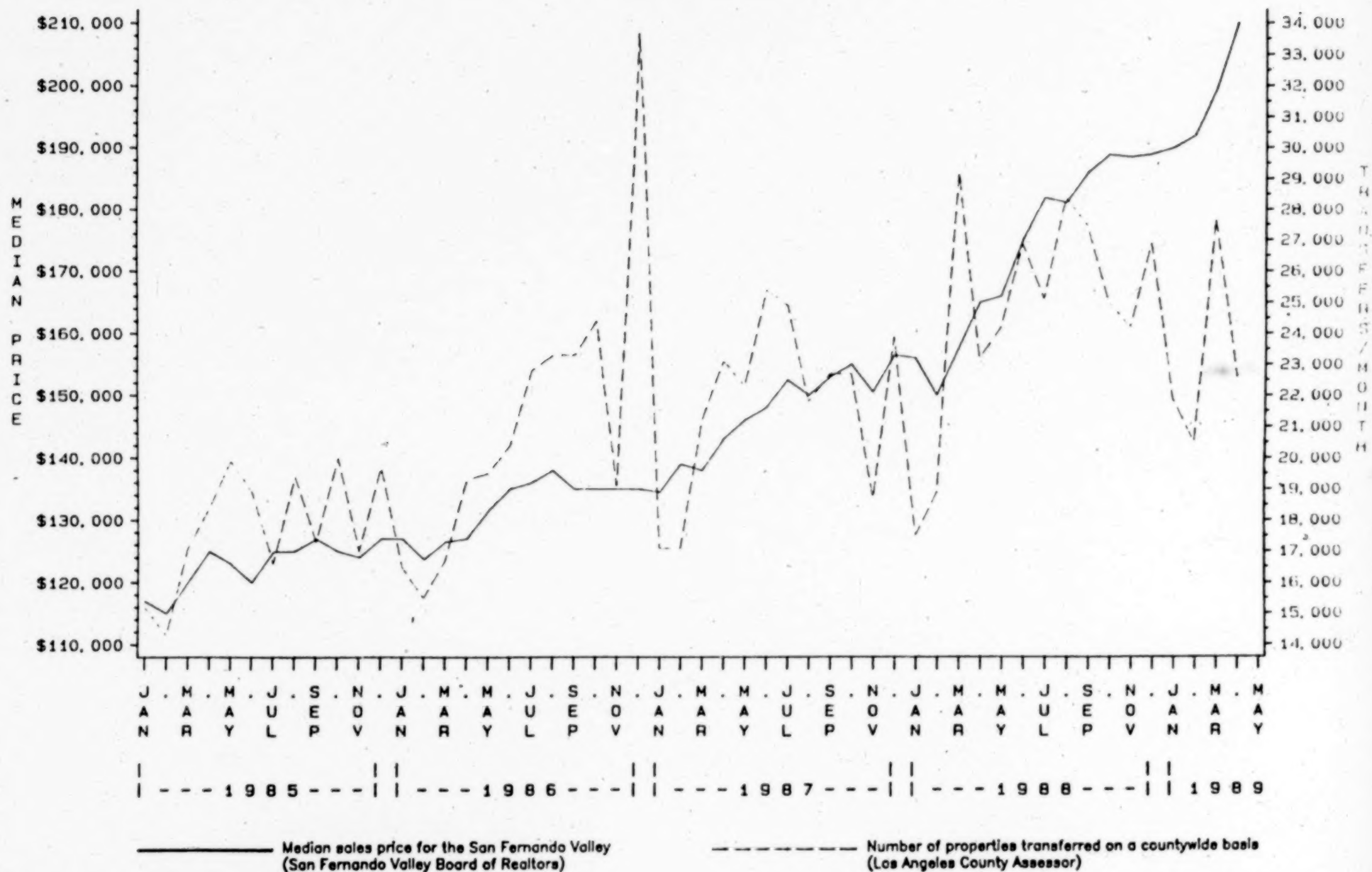
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1975 BASE YEAR ROLL PARCELS

by Single Family Res (SFR), Residential Income (R-I), and Commercial Industrial (C/I)



COMPARISON OF PROPERTY TRANSFERS AND MEDIAN SALES PRICE
OF EXISTING SINGLE FAMILY RESIDENCES
1985 - 1989



* * *

[Pages 20-22 of EXHIBIT B Omitted in Printing]

* * *

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Civil No. C738781

[TITLE Omitted in Printing]

[ORIGINAL FILED
December 28, 1989]
COUNTY CLERK]

**DECLARATION OF CATHERINE RICH IN SUPPORT
OF MOTION FOR ISSUANCE OF DECLARATORY
JUDGMENT PURSUANT TO CAL. REVENUE AND
TAXATION CODE § 4808, AND FOR CLAIM FOR
REFUND PURSUANT TO REVENUE AND
TAXATION CODE § 5097**

Date: January 29, 1990

Time: 9:00 a.m.

Dept. 36

I, Catherine Rich, declare:

1. I am an attorney licensed to practice in the State of California, and have been employed by the Center for Law in the Public Interest to assist in the preparation of *Nordlinger v. Lynch*.

2. On July 13, 1989, August 8, 1989, and August 9, 1989, I went to the Los Angeles County Assessor's Office located at 4909 Overland Avenue in Culver City and purchased Building and Land Data Line printouts for each house on the 3800 and 3900 blocks of South Sycamore Avenue in Los Angeles, California.¹

¹The property described on the Building and Land Data Line printout as 5138 Orange Place is a corner property which is also described as 3938 South Sycamore Avenue.

3. On July 13, 1989, I took photographs of each house on the 3800 and 3900 blocks of South Sycamore Avenue in Los Angeles which fairly and accurately depict each house. For each house, I attached a copy of the photograph to a photocopy of the Building and Land Data Line printout that describes the property. These photographs/Assessor's printouts are attached as Exhibits F and G to the Declaration of Stephanie Nordlinger.

4. On December 20, 1989, I went to the Los Angeles County Assessor's Office located at 4909 Overland Avenue in Culver City and examined and purchased Building and Land Data Line printouts for selected properties described in Table 1 of the Declaration of David Gold. In addition, I purchased a Building and Land Data Line printout for the property located at 31016 Broad Beach Road in Malibu. Photocopies of these printouts are attached as Exhibit A.

5. On December 20, 1989, I went to 725 Marco Place in Venice and took a photograph which accurately depicts the property. A copy of this photograph, attached to a photocopy of the Building and Land Data Line printout which describes the property, is attached as Exhibit B. This property is a small house on a small lot located a little over a mile from the beach.

6. On December 26, 1989, I went to 721 North Maple Drive in Beverly Hills and took a photograph which accurately depicts the property. A copy of this photograph, attached to a photocopy of the Building and Land Data Line printout which describes the property, is attached as Exhibit C. This Beverly Hills home is a stately mansion set on a large lot.

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct.

Executed this [27th] day of December in Los Angeles, California.

_____/s/_____
Catherine Rich

* * *

[CERTIFICATE OF SERVICE Omitted in Printing;

EXHIBIT A Omitted in Printing]

* * *

[EXHIBIT B]

LOS ANGELES COUNTY ASSESSOR'S
BUILDING AND LAND DATA LINE
printout for 725 Marco Place, Venice

* * *

[PHOTOGRAPH Omitted in Printing—
reproduced in the Petition for Cert. at 10]

* * *

TYPE= BD ASSR ID NO= 4241 021 027

FILE NO= 14 UPDATE= 12/16/89 DATE=12/20/89

ASSR ID NO	REG	CC	USE	ZONE	VC	REC DT	TRF PRICE	# OCI	OC2	DT	INT	DRC
4241 021 027	6 07	07125	0100	LAR2	K	891002-75	3335000	1	3	5	Y	00%-0 A

NAME AND SITUS ADDRESS
BOYER, RYAN F AND JANET

725 MARCO PL
VENICE CALIF

SUBPART KEY	DESIGN TYPE	CLASS	YR BLT	EFF YR	NO OF UNITS	NO OF BDRMS	BATHS	NO OF MAIN	SQ FT SQUARE FT	COMPOSITE
0101	0110	D5D	20	24	1	2		1	979	

TOTAL UNITS	TOTAL SQ FT	TRF PRICE PER UNIT	TRF PRICE PER SQ FT	AVG SQ FT PER UNIT	BASE VALUE LAND	PC	RC	BY
1	979	335000	342	979	IMP	50000	T	88

LAND WIDTH	LAND DEPTH	USABLE SQ FT	ACRES	TOTAL
35	90	3150		210000

SEWERS

PF1 = PARCEL INQ ; PF2 = NAME INQ ; PF3 = ADDRESS INQ ; PF10 = AUTH MENU ; PF11 = EXIT SYSTEM

[EXHIBIT C]

LOS ANGELES COUNTY ASSESSOR'S
BUILDING AND LAND DATA LINE
printout for 721 N. Maple Drive, Beverly Hills

* * *
[PHOTOGRAPH Omitted in Printing—
reproduced in the Petition for Cert. at 9]
* * *

TYPE= BD ASSR ID NO= 4341 018 015

FILE NO= 14 UPDATE= 12/16/89 DATE=12/20/89

ASSR ID NO	REG	CC	USE	ZONE	VC	REC	DT	TRF PRICE	# OCI OC2	DT	INT	DRC
4341 018 015	5 07	07152	0101	BHR1	A	730614	-50	250000	1		00%-0	

NAME AND SITUS ADDRESS

MAGID, ROBERT M AND ROBERTA A

721 N MAPLE DR
BEVERLY HILLS CALIF 90210-0000

SUBPART	DESIGN		YR	EFF	NO OF	NO OF	NO OF	SQ FT	COMPOSITE
KEY	TYPE	CLASS	BLT	YR	UNITS	BDRMS	BATHS	MAIN	SQUARE FT
0101	0121	D11B	33	36	1	7		7	7756

TOTAL	TOTAL	TRF PRICE	TRF PRICE	AVG SQ FT	BASE VALUE	PC	RC	BY
UNITS	SQ FT	PER UNIT	PER SQ FT	PER UNIT	LAND	17600	T	75
1	7756	250000	32	7756	IMP	71000	G	75

LAND WIDTH	LAND DEPTH	USABLE SQ FT	ACRES	TOTAL	247000
100	281	28150			

SEWERS

PF1 = PARCEL INQ ; PF2 = NAME INQ ; PF3 = ADDRESS INQ ; PF10 = AUTH MENU ; PF11 = EXIT SYSTEM

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Civil No. C738781

[TITLE Omitted in Printing]

[ORIGINAL FILED
January 22, 1990]
COUNTY CLERK]

**DECLARATION OF MARY LOUISE COHEN IN
SUPPORT OF MEMORANDUM OF POINTS
AND AUTHORITIES IN OPPOSITION TO
GENERAL DEMURRER OF DEFENDANT
JOHN J. LYNCH TO PLAINTIFF'S
AMENDED COMPLAINT**

Date: January 29, 1990

Time: 9:00 a.m.

Dept. 36

I, Mary Louise Cohen, declare:

1. I am a member of the Bar of the State of California and am counsel for plaintiff.

2. Plaintiff initiated this action on September 28, 1989 to comply with § 4808 of the Revenue and Taxation Code, which required that her action be filed within 30 days of the August 31, 1989 delinquency date of the tax bill she was challenging. At that time her claim for refund was pending before the Board of Assessment Appeals. On October 25, 1989, this refund claim was denied by the Board of Assessment Appeals, making the matter ripe for judicial action. That same day, solely for the purpose of adding her newly perfected refund claim, plaintiff filed an amended complaint, naming Los Angeles County as a defendant, and asking for a refund of property taxes.

3. Attached as Exhibit A is a copy of a pleading entitled "[Proposed] Second Amended Complaint For Declaratory Judgment Pursuant to Cal. Revenue and Taxation code § 4808 and for Claim for Refund Pursuant to Revenue and Taxation Code § 5097." If the court sustains Defendant Lynch's Demurrer but denies his request that plaintiff not be permitted leave to amend, plaintiff proposes to file and serve this complaint.

4. On December 28, 1989, plaintiff filed several declarations in support of her motion for declaratory judgment and claim for refund. These declarations are cited throughout plaintiff's opposition to the demurrer because they provide factual support for her request for leave to amend her complaint if the demurrer is sustained. For the convenience of the court, true and correct copies of the following declarations are attached hereto: Declaration of Manuel Estrada (12/17/89), Declaration of Ken Kirshner (12/21/89), Declaration of Stephanie Nordlinger (12/21/89), Declaration of Robyn Phillips (12/23/89), and Declaration of Catherine Rich (12/28/89). The Declaration of David Gold executed on December 28, 1989 is attached to the Declaration of David Gold executed on January 22, 1990 and filed in opposition to defendant John J. Lynch's Demurrer to Plaintiff's Amended Complaint.

Executed this 22nd day of January, 1990 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____/s/_____
Mary Louise Cohen

* * *

[CERTIFICATE OF SERVICE Omitted in Printing]

* * *

[EXHIBIT A]
SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Civil No. C738781

[TITLE Omitted in Printing]

[FILED
as an Exhibit only
January 22, 1990]

**[PROPOSED] SECOND AMENDED COMPLAINT FOR
DECLARATORY RELIEF PURSUANT TO
CALIFORNIA REVENUE & TAXATION CODE § 4808
AND FOR REFUND OF PROPERTY TAXES
PURSUANT TO CALIFORNIA REVENUE
AND TAXATION CODE § 5097**

Plaintiff alleges:

INTRODUCTION

1. This action challenges the constitutionality of Article XIII A of the California Constitution. Plaintiff seeks (a) a judgment under section 4808 of the Revenue and Taxation Code declaring that the provisions of Article XIII A of the California Constitution, which result in owners of similarly situated real properties being subject to widely disparate real property taxes, violate the equal protection guarantees of the state and federal constitutions; and (b) a refund under section 5097 of the Revenue and Taxation Code of property taxes unlawfully collected from plaintiff pursuant to Article XIII A.

2. Before 1978, California law mandated the use of a method used in many jurisdictions for assessing and

taxing real property. It required that real property be taxed according to its current fair market value. As a result, property was periodically reassessed so that owners of similarly situated properties paid approximately the same amount of ad valorem real property taxes.

3. In 1978, Article XIII A (popularly called Proposition 13) was added by initiative to the California Constitution. Article XIII A limits the maximum ad valorem tax rate on real property to 1% of its so-called "full cash value." Article XIII A defines "full cash value" in one of two ways: for individuals who have owned the same property continuously since 1975, "full cash value" equals the assessed value of the property as of the 1975-76 tax year. For those who purchase, newly construct or otherwise acquire property after the 1975-76 tax year, "full cash value" equals the property's fair market value when purchased, newly constructed, or when a change in ownership occurs. Article XIII A also provides that the "full cash value base" may reflect "from year to year" an inflationary rate not to exceed 2%.

4. Because inflation, measured by the Consumer Price Index for Los Angeles, has risen more than 2% every year but one since 1978 (specifically, in chronological order the rate of inflation from 1978 to 1988 has been 7.0%, 11.4%, 8.2%, 5.4%, 1.8%, 4.5%, 4.8%, 3.5%, 4.6% and 5.4%) and property values have risen much more rapidly than 2% a year since Article XIII A was adopted (today the median price of a home in Los Angeles County is approximately \$225,000), the provisions of Article XIII A which freeze a person's property tax according to the date the property was acquired or newly constructed establish a system that invidiously and routinely discriminates against recent property owners

in favor of longtime property owners. Such a discriminatory system has been labeled a "welcome stranger" system because longtime property owners who had the capacity to own and hold property at an earlier date enjoy low property taxes while newcomers to the same neighborhood are taxed at much higher levels.

5. On September 22, 1978 in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208 (1978), the California Supreme Court upheld Article XIII A against a "facial" challenge that it violated constitutional equal protection guarantees. No evidence of actual disparate tax treatment for owners of similarly situated properties was presented to the Court, and the decision was not appealed to the United State Supreme Court. Since this decision, several California courts have upheld Article XIII A against other equal protection challenges.

6. On January 18, 1989, in *Allegheny Pittsburgh Coal Company v. County Commission of Webster County, West Virginia*, 109 S.Ct. 633 (1989), the United States Supreme Court invalidated a tax assessment system which used a "welcome stranger" provision similar to that contained in Article XIII A. Under the challenged scheme, a property was generally reassessed only when that property was sold. Because this West Virginia assessment system resulted in the owners of similarly situated properties paying widely divergent tax bills, the Court concluded that it violated the Equal Protection Clause of the 14th Amendment to the United States Constitution.

7. The discriminatory impact of the unlawful Webster County, West Virginia system is indistinguishable from that of Article XIII A's "welcome stranger" provision as applied in 1989, and this new Supreme Court case

provides compelling authority that Article XIII A's tax assessment system as applied in 1989 is unconstitutional.

8. Proposition 13 prescribes how the defendant and all other California county tax assessors may value real property and prohibits the defendant assessor from assigning a value to plaintiff's property that corresponds with the assessed values of comparable properties. Unless those provisions of Proposition 13 which result in discriminatory assessments are declared to be unlawful, plaintiff's property and all other real property in Los Angeles County and the State of California will continue to be assessed in a manner that violates state and federal constitutional equal protection guarantees.

PARTIES

9. Plaintiff Stephanie Nordlinger owns and resides in the home located at 3933 S. Sycamore Avenue in the City of Los Angeles in Los Angeles County.

10. Defendant John J. Lynch is the tax assessor for Los Angeles County. He is responsible for the tax assessment of real property in Los Angeles County in accordance with Article XIII A's welcome stranger method. Defendant Lynch, as the Los Angeles County assessor, is specified as the proper defendant in a declaratory judgment action alleging an unconstitutional assessment brought pursuant to § 4808 California Revenue and Taxation Code.

11. Defendant Los Angeles County is a political subdivision of the State of California and collected, received and holds the property taxes unlawfully assessed against and collected from defendant.

TAX ASSESSMENT OF 3933 S. SYCAMORE

12. On November 1, 1988, plaintiff purchased the house and lot located in the "Baldwin Hills" neighbor-

hood at 3933 S. Sycamore Avenue in Los Angeles County, for \$170,000. This property is described by the Los Angeles County Assessor's office as Tract No. 13372, Lot 110. Before her purchase of 3933 S. Sycamore, plaintiff had never owned real property in the State of California. Consequently, she had never been assessed any real property taxes nor had she paid any real property taxes.

13. Plaintiff's property is part of a tract of single family homes developed and built in 1947 by the Baldwin Hills Development Company. Today, the neighborhood still consists of moderately priced single family homes. While some residents have owned their homes for twenty years or more, many Baldwin Hills residents, like plaintiff, are newcomers.

14. Plaintiff's lot at 3933 S. Sycamore is 8200 square feet, and her house contains 1114 square feet. Her house contains three bedrooms and one bathroom. Plaintiff's house has not been enlarged since it was built, but a 14 by 18 foot storage room was added to the back of the garage in 1966. This addition was assessed at \$750 at that time.

15. The previous owners of 3933 S. Sycamore were Nancy and Derek Smith who purchased the property in 1986 for \$121,500. Under Article XIII A's provisions while the Smiths owned the property its "current assessed value" was based on the Smiths \$121,500 purchase price plus the 2% inflation adjustment.

16. The Smiths' 1988-89 tax bill for 3933 S. Sycamore included a "General Tax Levy" of \$1,264.08 (1% of \$121,500 plus an inflation adjustment for two years of \$4,908). The tax bill also included \$48.26 in "Voted

Indebtedness" and \$71.12 in "Direct Assessments" for a total yearly real property tax bill of \$1,383.46 due in two installments of \$691.73.

17. When plaintiff purchased 3933 S. Sycamore from the Smiths, the real estate taxes for the first half of fiscal year 1988-89 (July through December of 1988) were prorated between plaintiff and the Smiths and were paid when the property was transferred.

18. In February of 1989, plaintiff received a Joint Consolidated Duplicate Tax bill from the Los Angeles County Tax Collector which listed the second installment of the 1988-89 fiscal year taxes on 3933 S. Sycamore at \$691.73. That bill continued to show the "current assessed value" and "taxable value" of the property based on the Smiths' 1986 purchase price of \$121,500 plus the 2% inflation adjustment.

19. In February or early March of 1989, plaintiff received a Notice of Assessed Value Change from the Los Angeles County Tax Assessor. Pursuant to Article XIII A's "welcome stranger" provision, because the property had changed hands, it had been reassessed to \$170,100. This increase of \$43,692 represented the difference between the \$170,000 price plaintiff paid for the property and the \$121,500 price paid for it by the prior owners plus the 2% annual inflation adjustment (plus an billing error of \$100).

20. In March of 1989, plaintiff received a Joint Consolidated Supplemental Tax bill for 3933 S. Sycamore from the Los Angeles County Tax Collector which reflected the reassessment of plaintiff's property mandated by Article XIII A's "welcome stranger" provision. The bill informed plaintiff that the annual tax total had been increased by \$453.60 (\$436.92 general tax levy and \$16.68 voted indebtedness). Because

plaintiff had owned the property for only part of the 1988-89 fiscal year, the supplemental tax was prorated. The additional \$263.08 plaintiff was billed brought the general tax levy on 3933 S. Sycamore up to \$1,701 on an annualized basis. The bill stated that "This supplemental assessment is in compliance with Article XIII A of the California Constitution. It reflects the increase in your property taxes due to change in ownership occurring 11-01-88."

21. The first installment of this supplemental tax bill was due on April 30, 1989. The second installment was due August 31, 1989.

22. On April 10, 1989, plaintiff paid "under protest" the Joint Consolidated Tax bill of \$691.73 for the second installment of the 1988-89 taxes (based on the tax which would have been owed by the Smiths). At that time plaintiff filed a verified Application for Reduction of Assessment with the County of Los Angeles Assessment Appeals Board appealing both the assessment reflected in the February Joint Consolidated Duplicate Tax bill and that reflected in the March Joint Consolidated Supplemental Tax bill. The principal ground cited by plaintiff for the Application for Reduction of Assessment was that the assessment violates the equal protection guarantees of the United States and California Constitutions. A copy of the Verified Application for Reduction of Assessment is attached as Exhibit A.

23. As indicated on the verified Application for Reduction of Assessment, the fair assessed value of plaintiff's property, taking into account the assessment of comparable properties in plaintiff's neighborhood, is \$30,000. Based on such an assessment, plaintiff's general tax levy for the tax year 1988-89 would have been \$300. Because plaintiff owned the property for only 8 months

of that tax year, her tax bill based on such a general tax levy would have been \$200. Instead, plaintiff paid \$1096.05 in general tax levy taxes (\$842.64 based on the Joint Consolidated Tax bill for the entire year plus \$253.41 based on the Joint Consolidated Supplemental tax bill for 1988-89).

24. On April 28, 1989, plaintiff paid "under protest" the first installment of the Joint Consolidated Supplemental Tax bill (representing the additional tax owed because her purchase price for 3933 S. Sycamore exceeded the purchase price paid by the Smiths) and on August 28, 1989, plaintiff paid "under protest" the second installment of the Joint Consolidated Supplemental Tax bill.

25. On July 17, 1989, a hearing officer for the Los Angeles County Board of Assessment Appeals denied plaintiff's Application for Reduction of Assessment and granted plaintiff's request that she be permitted to amend her verified Application for Reduction of Assessment to show that it was also a Claim for Refund.

26. On October 25, 1989, the Los Angeles County Board of Assessment Appeals denied plaintiff's Application for Reduction of Assessment and Claim for Refund.

27. No refund of the taxes paid by plaintiff, or any part thereof has been made to plaintiff or to anyone acting on her behalf.

UNEQUAL ASSESSMENT AND TREATMENT OF SIMILARLY SITUATED PROPERTIES

28. The 3800 and 3900 blocks of S. Sycamore Avenue contain 34 homes in addition to plaintiff's. The lot sizes for these 34 homes range from 7,600 to 10,400 square feet, and the size of the houses ranges from 1114 square

feet (like plaintiff's house) to 2742 square feet. Most of these houses, like 3933 S. Sycamore, retain the uniform character of the original 1947 tract development.

29. Information contained in the files of the Los Angeles County Tax Assessor indicates that, pursuant to Proposition 13's "welcome stranger" assessment provision, gross disparities exist in the assessed value of these generally comparable properties. These gross disparities discriminate against plaintiff as a newcomer to the neighborhood. For example:

a. A three bedroom, two bathroom house next door to plaintiff is on a lot 10% larger than plaintiff's, and contains 100 more square feet. It is assessed at \$36,878, based on its 1975 valuation. The owner of this two bathroom house on a larger lot is subject to a general tax levy of only \$368, about one fifth of the \$1700 plaintiff is charged.

b. A three bedroom, one bathroom single family house one block from the plaintiff's house is on a lot which is 900 square feet larger than plaintiff's lot, while the house contains square footage precisely equal to plaintiff's. It is assessed at \$35,820 based on its 1975 valuation. As a result, plaintiff's neighbor, who lives in that house on property substantially similar to (but larger than) plaintiff's, is subject to a general tax levy of only \$358.20. In contrast, the general tax levy assigned to plaintiff's property (\$1,701) is almost five times higher; and

c. Another three bedroom, one bathroom single family house in plaintiff's block on S. Sycamore is on a lot which is 9240 square feet (1040 square feet larger than plaintiff's lot), while the house contains 1158 square feet (44 square feet larger than

plaintiff's house). However, this larger house on a larger lot on the same block is assessed at \$36,107 based on its 1975 valuation, and the general tax levy is only \$361.07. Again, plaintiff's annual property tax is nearly five times that paid by her neighbor.

30. The property tax disparity between home buyers in plaintiff's neighborhood is even greater in 1989, increasing from almost 5 to 1 for 1988 home buyers, to 6 to 1 for 1989 home buyers.

31. In 1978, immediately after the adoption of Article XIII A, the tax disparity created by Article XIII A's "welcome stranger" provision between similar properties purchased in 1978 and those owned since 1975-76 was approximately 1.4 to 1. Today, in 1989, that disparity averages at least 5 to 1 in Los Angeles County, while in certain neighborhoods the post- Article XIII A disparities between property tax assessments for similarly situated properties are as great as 250 to 1, 500 to 1, and more. This same pattern of discrimination against more recent property owners prevails throughout the state of California.

32. The chart below (which is based on information obtained from the rolls of the Los Angeles County Assessor's Office and verified by extensive studies) provides examples of dramatic tax inequities between longtime owners and recent purchasers of comparable single family homes in neighborhoods throughout Los Angeles County:

NEIGHBORHOOD	1989 PROP- ERTY ASSESS- MENTS: 1975- 76 PROPERTY	NEIGHBORHOOD	1989 PROP- ERTY ASSESS- MENTS: 1975- 76 PROPERTY
	TAX ASSESS- MENTS		TAX ASSESS- MENTS
SANTA MONICA (Ocean Park)	17:1	PALMS	10:1
VENICE (Oakwood)	15:1	SILVERLAKE	10:1
BEL AIR	13:1	SANTA CLARITA	10:1
VENICE (Walk Streets)	13:1	LOS ANGELES (Mid-City)	10:1
SHERMAN OAKS	12:1	GRANADA HILLS	10:1
CERRITOS	12:1	S. PASADENA	10:1
ARCADIA	12:1	BOYLE HEIGHTS	10:1
WESTWOOD	12:1	POMONA	10:1
MALIBU	12:1	SUNLAND	10:1
PACIFIC PALISADES	12:1	EAGLE ROCK	10:1
BEVERLY HILLS	12:1	MONROVIA	9:1
W. LOS ANGELES (Rancho Park)	12:1	GLENDORA	9:1
BRENTWOOD	11:1	GREEN VALLEY	9:1
HOLMBY HILLS	11:1	HANCOCK PARK	9:1
GLENDALE	11:1	LOS ANGELES (Coliseum Area)	9:1
EL MONTE	11:1	MAR VISTA	9:1
SOUTH GATE	11:1	REDONDO BEACH	9:1
SAN GABRIEL	11:1	HUNTINGTON PARK	9:1
GRIFFITH PARK	11:1	HYDE PARK	9:1
PASADENA	11:1	PARK LA BREA	9:1
PALOS VERDES	10:1	ALHAMBRA	9:1
LONG BEACH	10:1	WEST HILLS	9:1
ENCINO	10:1	LINCOLN PARK	9:1
SAN PEDRO	10:1	MANHATTAN BEACH	9:1
HOLLYWOOD HILLS	10:1	SANTA MONICA (Montana Avenue)	9:1
		BALDWIN HILLS	7:1

33. These disparities in tax assessment create gross differences in the tax payments made by owners of comparable properties. The chart below provides examples of actual pairs of comparable homes and calculates the vastly different tax bills paid by owners of these comparable properties:

NEIGHBORHOOD OF HOMES	CURRENT MARKET VALUE	RATIO OF TAX ON NEW OWNER TO TAX ON PRE-1975 OWNER		
		TAX ON NEW OWNER	TAX ON PRE-1975 OWNER	
VENICE	\$ 335,000	\$ 3,350	\$ 260	13:1
BEVERLY HILLS	3,800,000	38,000	3,230	12:1
MANHATTAN BEACH	630,000	6,300	680	9:1
SANTA MONICA	1,000,000	10,000	1,140	9:1
MAR VISTA	425,000	4,250	520	8:1
LONG BEACH	345,000	3,450	420	8:1
BOYLE HEIGHTS	129,000	1,290	170	8:1
SAN GABRIEL	270,000	2,700	450	6:1
GLENDALE	325,000	3,250	490	7:1
BALDWIN HILLS (View Park)	310,000	3,100	500	6:1
BALDWIN HILLS (Plaintiff's Area)	210,000	2,100	360	6:1
VAN NUYS	270,000	2,700	420	6:1
COMPTON	90,000	900	180	5:1
WATTS	80,000	800	160	5:1

34. Recent purchasers of Los Angeles County vacant lots are also taxed at levels grossly higher than longtime owners of similarly situated properties. In some instances these disparities run as high as 500:1, with disparities of 30:1 or more being common. The chart below provides examples of the disparities in the taxes assessed against owners of similarly situated vacant lots:

PROPERTY TAX ASSESSMENTS BASED ON 1989 PURCHASE PRICE: PROPERTY TAX ASSESSMENTS BASED ON 1975-76 VALUES	
LOCATION	
PACIFIC PALISADES	583:1
PACIFIC PALISADES	252:1
BEVERLY GLEN CANYON/LA	108:1
LAUREL CANYON/LA	93:1
MALIBU	85:1
BEL AIR	53:1
LAUREL CANYON/LA	48:1
BEVERLY HILLS	47:1
BEVERLY HILLS	41:1
LAUREL CANYON/LA	28:1
LAUREL CANYON/LA	27:1

35. Recent purchasers of Los Angeles County apartment buildings and commercial and industrial income-producing properties are also charged taxes considerably in excess of those paid by longtime owners of the same or similar properties. The chart below provides examples of such disparities.

APARTMENTS

NEIGHBORHOOD	RATIO
BRENTWOOD	10:1
WEST HOLLYWOOD	9:1
HUNTINGTON PARK	9:1
ARCADIA	9:1
SOUTH GATE	9:1
HANCOCK PARK	9:1

LIGHT INDUSTRIAL

NEIGHBORHOOD	RATIO
FLORENCE	11:1
PALMDALE	10:1
WATTS	9:1
EL MONTE	8:1
VAN NUYS	7:1

STORE BUILDINGS

NEIGHBORHOOD	RATIO
CULVER CITY	11:1
DOWNTOWN LA	10:1
SOUTHGATE	9:1
GLENDALE	8:1
LONG BEACH	7:1

OFFICE BUILDINGS

NEIGHBORHOOD	RATIO
MONROVIA	8:1
SAN PEDRO	8:1
LA MID-CITY SECTION	7:1
COMMERCE	7:1
COMPTON	7:1

GARAGES

NEIGHBORHOOD	RATIO
COMPTON	10:1
SOUTH LOS ANGELES	8:1
UNIVERSAL CITY	6:1
GLENDALE	6:1
DOWNTOWN LOS ANGELES	6:1

RESTAURANTS

NEIGHBORHOOD	RATIO
UNIVERSAL CITY	9:1
INGLEWOOD	8:1
TEMPLE CITY	6:1
STUDIO CITY	6:1
WHITTIER	6:1

36. As property values increase in the future, the discriminatory impacts of Article XIII A's "welcome stranger" provision, which requires the systematic undervaluation of comparable properties, will magnify the current disparities between tax assessments of similarly situated properties. For example, if the average annual rate of growth in the assessed value of properties in plaintiff's neighborhood since 1975 continues, the disparity in tax assessments for similarly situated properties by 1999 will be approximately 22:1. In Watts the disparity will be 16:1, in San Gabriel it will be 35:1, in Beverly Hills it will be 71:1 and in Venice it will be 81:1.

37. In addition to subjecting owners of comparable properties to very different tax burdens, Article XIII A imposes like tax burdens on owners of properties which vary dramatically in value. For example, the owner of a spacious 7800 square foot, seven bedroom Beverly Hills mansion on a prime 28,000 square foot lot pays a general tax levy virtually equal to that paid by the owner of a tiny 980 square foot Venice home on an urban lot located more than a mile from the beach. Similarly, plaintiff pays a general tax levy on her modest Baldwin Hills home almost equal to that paid last year by the owner of a \$2.1 million Malibu beachfront home.

38. Because Article XIII A discriminates against new home purchasers in favor of longtime homeowners, it discourages and penalizes individuals who wish to move to California from any other state. It also penalizes individuals who wish to purchase a new house and move within the State. Most people move out of necessity because, for example, they marry, divorce, a spouse dies, the size of the family increases or they change jobs. Similarly, Article XIII A penalizes those individuals who were not old enough to own property in 1975 and those who were not financially capable of owning property in 1975.

39. Article XIII A was promoted as a means to cut back on wasteful government spending while making California taxes fair, equal, and within the ability of taxpayers to pay. These objectives could have been achieved without imposing unfair and unequal tax burdens on California property owners. Instead, Article XIII A has created an arbitrary system which inequitably assigns grossly disparate real property tax burdens on owners of generally comparable and similarly situated properties without regard to the use of the real property taxed, the burden the property places on government, the actual value of the property or the financial capability of the property owner.

**FIRST CAUSE OF ACTION
FOR DECLARATORY RELIEF AGAINST
DEFENDANT JOHN J. LYNCH**

40. Plaintiff realleges and incorporates by reference paragraphs 1 through 39 of this complaint.

41. California Revenue & Taxation Code § 4808 specifies that a declaratory judgment action may be filed within 30 days of the delinquency date of a tax bill

to challenge an unconstitutional assessment providing such action is filed within 12 months of a change in law which renders such assessment unconstitutional.

42. Plaintiff claims and contends that Article XIII A's welcome stranger provisions result in gross and inequitable disparities in tax assessments for similarly situated properties; that, by law, Article XIII A forbids the seasonable reappraisal of such similarly situated parcels to bring them into conformity with current market values, except when sale or construction allows such reappraisal and except for a paltry 2% annual allowable readjustment and that Article XIII A thereby violates the equal protection clause of the federal constitution, all as alleged in more detail above. Plaintiff further claims and contends that Article XIII A violates the equal protection clause because it infringes freedom of mobility and interstate travel with no compelling state interest. Plaintiff is informed and believes, and on the basis of such information and belief, alleges that defendants claim and contend in all respects to the contrary.

**SECOND CAUSE OF ACTION FOR REFUND OF
PROPERTY TAXES AGAINST DEFENDANT
LOS ANGELES COUNTY**

43. Plaintiff realleges and incorporates by references paragraphs 1 through 39 of this complaint.

44. Los Angeles County could achieve the same amount of revenue from the general property tax levy as that obtained under the current Article XIII A system if it lowered the tax rate to .44% of assessed value and assigned an assessed value to all Los Angeles County real estate that truly reflected its current market value.

45. Plaintiff owned her home for eight months of the 1989 tax year, and so her tax bill based on \$1700 for a full year was \$1133.33. Her fair share of general property taxes for the year should have been 44% of \$1133 or \$498.67. Defendant Los Angeles County thus owes Plaintiff a refund of property taxes for the tax year 1988-89 in the amount of \$634.66.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment as follows:

1. That the court issue its declaratory judgment that Article XIII A of the Constitution of California is invalid insofar as it requires that owners of similarly situated properties be taxed disparately in the manner alleged above;
2. That this court declare that the tax assessment of plaintiff's property at 3933 S. Sycamore at \$170,000 is invalid as alleged above;
3. That defendant Los Angeles County be required to refund to plaintiff the sum of \$634.66 together with interest;
4. That this court grant plaintiff her costs and reasonable attorneys fees; and
5. That the Court grant such other and further relief as it finds just and proper.

DATED: January —, 1990

CARLYLE W. HALL, JR.
MARY LOUISE COHEN
ANN E. CARLSON
Hall & Phillips

by Carlyle W. Hall, Jr.
Attorneys for Plaintiff

* * *

[(Unsigned) VERIFICATION Omitted in Printing;

The following Exhibits to the Cohen Declaration are
Omitted in Printing:

ESTRADA DECLARATION;
KIRSHNER DECLARATION;
NORDLINGER DECLARATION;

The PHILLIPS DECLARATION is reproduced
at 33-48 of this Joint Appendix;

The RICH DECLARATION is reproduced
at 49-53 of this Joint Declaration]

* * *

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

Civil No. C 738 781

[TITLE Omitted in Printing]

[ORIGINAL FILED
January 22, 1990]
COUNTY CLERK]

**DECLARATION OF DAVID GOLD IN SUPPORT OF
MEMORANDUM OF POINTS AND AUTHORITIES IN
OPPOSITION TO GENERAL DEMURRER OF
DEFENDANT JOHN J. LYNCH TO PLAINTIFF'S
AMENDED COMPLAINT**

Date: January 29, 1990

Time: 9:00 a.m.

Dept. 36

I, David Gold declare:

Background

1. On December 28, 1989, I executed a declaration in support of plaintiff's motion for declaratory judgment and claim for refund, a true and correct copy of which is attached as Exhibit A and incorporated herein by reference. This declaration, filed in December 28, 1989, describes the results of an economic study I performed to determine the magnitude of property tax disparities between comparable real properties in Los Angeles County.

2. The purpose of this Supplemental Declaration is to describe other real property tax disparities in Los

Angeles County identified since the December 28, 1989 declaration was filed with the court.

Single Family Homes

3. Using data supplied to Damar Real Estate Information Service by the Los Angeles County Assessor's Office and the Los Angeles County Recorder, I retrieved from the Damar data (1) a description of every single family residence that sold in Los Angeles County in August, 1989 for which Damar had a verified sale price; and (2) a description of every single family residence sold from June, 1989 through December, 1989 for which Damar had a verified sales price in 10 separate areas, each representing a page in the Thomas Guide for Los Angeles County. See Declaration of Ralph James executed January 18, 1990 in Opposition to Defendant John J. Lynch's General Demurrer.

4. I compared the tax assessment prior to the 1989 sale to the 1989 sales price (upon which the post-sale assessment will be based). Based on this comparison, I used my computer to calculate the ratio of the post-sale assessment to the pre-sale assessment for each single family residential property and to sort the properties according to the magnitude of this ratio.

5. Attached as Exhibit B are examples of the single family residential sales so identified where the ratio of post-sale assessment to pre-sale assessment is 8:1 or higher. These ratios ranged as high as 17:1 in the Ocean Park section of Santa Monica, and were commonly 11:1 and 12:1 throughout Los Angeles County. For example, a small two bedroom house in Santa Monica previously assessed at \$27,000 was recently purchased for \$465,000. The new owner's general tax levy (which is 1% of the purchase price) will be \$4,650 or 17 times higher than

the \$270 tax bill paid last year by the seller. Similarly, a neighboring two bedroom house previously assessed at \$32,519 recently sold for \$560,000. The new owner's general tax of \$5,600 is also 17 times higher than the \$325 tax paid by the seller. Likewise, the prior owner of a 7400 square foot Bel Air mansion was previously assessed at only \$395,000, while the new owner's assessment will be his purchase price of \$5,250,000, which is over 13 times as high. And, the new owner of a modest 928 square foot house in Cerritos assessed at \$300,000, pays not much less than the prior owner of the Bel Air mansion, and 12 times as much as the tax on the \$25,725 prior assessment on his house's seller. As a final example, the buyer of a three bedroom Sherman Oaks house will pay \$6,900 general tax on his new \$690,000 assessment, which is more than 12 times the \$560 per year the prior owner paid based on a \$56,000 prior assessment. The printouts from the Los Angeles County Assessor's Office describing each of these four properties is attached as Exhibit C.

6. The chart below lists those neighborhoods where I found disparities of 9:1 or more:

NEIGHBORHOOD	1989 PROP- ERTY ASSESS- MENTS: 1975- 76 PROPERTY	NEIGHBORHOOD	1989 PROP- ERTY ASSESS- MENTS: 1975- 76 PROPERTY
	TAX ASSESS- MENTS		TAX ASSESS- MENTS
SANTA MONICA	17:1	PALMS	10:1
(Ocean Park)		SILVERLAKE	10:1
VENICE (Oakwood)	15:1	SANTA CLARITA	10:1
BEL AIR	13:1	LOS ANGELES	10:1
VENICE	13:1	(Mid-City)	
(Walk Streets)	12:1	GRANADA HILLS	10:1
SHERMAN OAKS	12:1	S. PASADENA	10:1
CERRITOS	12:1	BOYLE HEIGHTS	10:1
ARCADIA	12:1	POMONA	10:1
WESTWOOD	12:1	SUNLAND	10:1
MALIBU	12:1	EAGLE ROCK	10:1
PACIFIC PALISADES	12:1	MONROVIA	9:1
BEVERLY HILLS	12:1	GLENDORA	9:1
W. LOS ANGELES	12:1	GREEN VALLEY	9:1
(Rancho Park)		HANCOCK PARK	9:1
BRENTWOOD	11:1	LOS ANGELES	9:1
HOLMBY HILLS	11:1	(Coliseum Area)	
GLENDAL	11:1	MAR VISTA	9:1
EL MONTE	11:1	REDONDO BEACH	9:1
SOUTH GATE	11:1	HUNTINGTON	9:1
SAN GABRIEL	11:1	PARK	
GRIFFITH PARK	11:1	HYDE PARK	9:1
PASADENA	11:1	PARK LA BREA	9:1
PALOS VERDES	10:1	ALHAMBRA	9:1
LONG BEACH	10:1	WEST HILLS	9:1
ENCINO	10:1	LINCOLN PARK	9:1
SAN PEDRO	10:1	MANHATTAN	9:1
HOLLYWOOD HILLS	10:1	BEACH	

Attached as Exhibit D are printouts from the Los Angeles County Assessor's Office and a copy of the Damar data describing these additional properties where the disparity is 11:1 or more.

7. The tax disparities between buyers and sellers of these recently resold properties closely mirror the disparities between pre-1975 owners and post-1989 purchasers of similarly situated properties in a cross section of Los Angeles County neighborhoods.¹ This similarity is shown on the chart below.

NEIGHBORHOOD	TAX PAID BY 1989 PURCHASES COMPARED TO TAX PAID BY PRE-1975 OWNER OF COMPARABLE PROPERTY	TAX PAID BY 1989 PURCHASER COMPARED TO TAX PAID BY SELLER
VENICE	13:1	13:1
(Walk Streets)		
SANTA MONICA	9:1	9:1
(Montana Area)		
LONG BEACH	8:1	7:1
(Marina)		
MAR VISTA	8:1	8:1
BOYLE HEIGHTS	8:1	7:1
BALDWIN HILLS	6:1	5:1
(Plaintiff's Area)		
WATTS	5:1	4:1

¹The method by which these comparable of homes were selected is described in paragraphs 15 through 21 the declaration I executed on December 28, 1989 in support of plaintiff's motion for declaratory judgment and claim for refund attached as Exhibit A.

Vacant Lots

7. Using data supplied to Damar by the Los Angeles County Assessor's Office and the Los Angeles County Recorder, I retrieved from the Damar data, a description of all vacant lots sold from March, 1989 through December, 1989 for which Damar had a verified sales price in 10 separate areas on the Westside of Los Angeles County, each representing a page in the Thomas Guide for Los Angeles County.

8. I then compared the previous assessment (prior to the 1989 sale) to the new sales price (upon which the post-sale assessment will be based). Based on this comparison, I again used my computer to calculate the ratio of the post-sale assessment to the pre-sale assessment for each such property and to sort the properties according to the magnitude of this ratio.

9. The disparities between the real estate taxes charged to the new buyer and those paid by the seller for exactly the same piece of vacant property ranged up to 583:1 and 252:1 in the Pacific Palisades. In an area stretching from Laurel Canyon to Bel Air I found disparities from 40:1 to more than 100:1 for six lots sold in this one ten month period. See Declaration of Alexander H. Pope executed January 21, 1990.

10. The survey described in paragraph 11 above also revealed that many other 1989 purchasers of Los Angeles County real properties would be paying property taxes 30 to 50 or more times higher than the taxes paid by the sellers for exactly the same parcels. The chart below displays examples of these disparities:

VACANT LOTS

LOCATION	ASSESSORS PARCEL NUMBER	AREA IN SQUARE FEET	1989 SALE PRICE	ASSESS- MENT BEFORE SALE	RATIO OF NEW ASSESSMENT TO PRIOR ASSESSMENT
PACIFIC PALISADES	4415-033-001	47,916	\$355,000	\$ 609	583:1
PACIFIC PALISADES	4416-021-024 4416-021-025 ²	9,930	\$260,000	\$ 1,010	252:1
BEVERLY GLEN CANYON/LA	4380-021-023 4380-021-024 4380-021-025	7,485	\$ 50,000	\$ 465	108:1
LAUREL CANYON/LA	5569-025-015	13,710	\$350,000	\$ 3,782	93:1
MALIBU	4452-025-005	87,093	\$500,000	\$ 5,873	85:1
BEL AIR	4368-003-005	8,712	\$345,000	\$ 6,625	53:1
LAUREL CANYON/LA	5564-010-019	6,160	\$ 75,000	\$ 1,560	48:1
BEVERLY HILLS	4355-006-049	8,494	\$240,000	\$ 5,088	47:1
BEVERLY HILLS	4355-009-014	136,778	\$359,000	\$ 8,747	41:1
LAUREL CANYON/LA	5556-024-006	5,551	\$130,000	\$ 4,590	28:1
LAUREL CANYON/LA	5556-029-008	11,590	\$300,000	\$11,229	27:1

Attached as Exhibit E are printouts from the Los Angeles County Assessor's Office and/or the Damar data describing these properties. Disparities for many other

²Where the 1989 transaction included multiple parcels for one sale price, the parcels appear on the chart as a group.

lots in this same area ranged from 10:1 to 79:1. Attached as Exhibit F is a list of such lots.

11. The Damar data also indicates that there are numerous properties similarly situated to these recent 1989 resales that still retain their 1975 base year assessment. Consequently, these 1975 base year properties continue to be assessed and taxed at a very small fraction of these 1989 resales.

Commercial and Industrial Properties

12. I retrieved from the Damar data a description of every sale of commercial or industrial property in Los Angeles County for which a verified sales price was available from June through December of 1989. I then sorted this list according to the land use, and, utilizing the techniques described in paragraph 3 above, calculated the disparities between the real estate taxes paid by the sellers and those that would be owed by the new buyers.

13. The ratio of disparity between the tax levied on the new purchasers and that paid by the sellers commonly ranged from 8:1 to 10:1 and above throughout the county. This chart below provides examples of the disparities I found for a variety of types of commercial properties.

LIGHT INDUSTRIAL

NEIGHBORHOOD	RATIO
FLORENCE	11:1
PALMDALE	10:1
WATTS	9:1
EL MONTE	8:1
VAN NUYS	7:1

STORE BUILDING

NEIGHBORHOOD	RATIO
CULVER CITY	11:1
DOWNTOWN LA	10:1
SOUTH GATE	9:1
GLENDALE	8:1
LONG BEACH	7:1

OFFICE BUILDINGS

NEIGHBORHOOD	RATIO
MONROVIA	8:1
SAN PEDRO	8:1
LA MID-CITY SECTION	7:1
COMMERCE	7:1
COMPTON	7:1

GARAGES

NEIGHBORHOOD	RATIO
COMPTON	10:1
SOUTH LOS ANGELES	8:1
UNIVERSAL CITY	6:1
GLENDALE	6:1
DOWNTOWN LOS ANGELES	6:1

RESTAURANTS

NEIGHBORHOOD	RATIO
UNIVERSAL CITY	9:1
INGLEWOOD	8:1
TEMPLE CITY	6:1
STUDIO CITY	6:1
WHITTIER	6:1

14. Again, the Damar data indicates that there are numerous properties similarly situated to these recent 1989 resales that still retain their 1975 base year assessment. Consequently, these 1975 base year properties continue to be assessed and taxed at a small fraction of these 1989 resales.

Apartment Buildings

15. I also retrieved from the Damar data a description of every sale of residential income property of five units or more in Los Angeles County for which a verified sales price was available from August through December of 1989. I then sorted this list according to the land use, and utilizing the techniques described in paragraph 3 above and calculated the disparities between the real estate taxes paid by the sellers and those that would be owed by the new buyers. Attached as Exhibit G is a description of those apartment buildings where the ratio of post-sale assessment to pre-sale assessment is 5:1 or higher.

15. The ratio of disparity between the tax levied on the new purchaser and that paid by the seller commonly ranged from 7:1 to 9:1 and above throughout the county. The chart below provides examples of these disparities:

APARTMENTS

NEIGHBORHOOD	RATIO
BRENTWOOD	10:1
WEST HOLLYWOOD	9:1
HUNTINGTON PARK	9:1
ARCADIA	9:1
SOUTH GATE	9:1
HANCOCK PARK	9:1

SUN VALLEY	8:1
KOREATOWN	8:1
NORTH HOLLYWOOD	8:1
LOS ANGELES (Downtown)	7:1
BURBANK	7:1
SHERMAN OAKS	7:1
GLENDORA	7:1
HAWTHORNE	7:1
WEST LOS ANGELES	7:1
EL MONTE	7:1
PASADENA	7:1
PARK LA BREA	7:1

16. The Damar data also indicates that there are numerous properties similarly situated to these recent 1989 resales that still retain their 1975 base year assessment. Consequently these 1975 base year properties continue to be assessed and taxed at a small fraction of these 1989 resales.

Executed this 22nd day of January, 1990 at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

_____/s/_____
David Gold

* * *

[CERTIFICATE OF SERVICE Omitted in Printing;

EXHIBIT A (Dec. 28, 1989 Gold Declaration)
is reproduced at 16-32 of this Joint Appendix]

* * *

[EXHIBIT B]:

[BUYER'S ASSESSMENT COMPARED
TO SELLER'S ASSESSMENT][LOS ANGELES COUNTY]
AUGUST [1989] RESIDENTIAL SALES

<u>Address</u>	<u>Grid</u>	<u>Price</u>	<u>Pre-Sale Assessment</u>	<u>Ratio</u>
317 Strand St	49-A2	465,000	28,074	17
126 Fraser Av	49-A2	560,000	32,519	17
3429 Kerckhoff	78-F6	405,000	30,953	13
214 S Oak Av	27-D4	200,000	16,185	12
4426 Ventura Ca	22-F3	690,000	56,036	12
303 S 2 Av	28-E5	562,000	47,542	12
19318 Bloomfiel	81-C2	300,000	25,725	12
13400 Mulhollan	22-F5	970,000	83,735	12
10913 Moorpark	23-E3	405,000	36,685	11
435 S Lapeer Dr	42-D2	660,000	60,740	11
1403 Shadyglen	18-E4	925,000	84,911	11
2624 Castle Hei	42-C4	529,000	48,430	11
3600 Yorkshire	28-A5	530,000	47,804	11
8203 Bell Av	58-E1	80,000	7,434	11
486 W Leroy Av	28-C6	575,000	54,075	11
3561 Cogswell R	47-F1	386,000	34,479	11
3050 Benedict C	22-E6	1,140,000	102,416	11
3822 Cogswell R	39-A6	400,000	36,569	11
255 S Greenwood	27-D4	265,000	24,154	11
364 S Virginia	27-E5	344,000	30,034	11
1403 Oxford Av	27-C1	204,500	18,536	11
218 S Lorraine	34-D6	1,150,000	104,769	11
2626 Highland A	49-B2	433,000	40,975	11
884 W 12 St	78-F4	249,000	25,725	10
9330 Bolton Rd	42-C3	800,000	81,512	10
1510 9 St	75-D4	415,000	43,103	10
4662 White Oak	21-E3	1,150,000	114,699	10
15 Genoa St	28-E5	331,000	34,607	10
196 Ximeno Av	76-B6	475,000	48,200	10
3760 Corta Call	28-B4	200,000	20,108	10
2621 Kerckhoff	78-F5	168,000	16,974	10
1642 Capistrano	18-E6	380,000	39,834	10
325 S Oak Av	27-D4	388,000	38,362	10
1271 N Catalina	27-B1	360,000	37,219	10
2071 Grace Av	34-B2	530,000	55,122	10
417 S Gladys Av	37-F3	135,000	14,097	10
3138 Barbydell	42-B5	740,000	71,741	10
1009 E 53 St	52-C3	125,000	12,660	10

<u>Address</u>	<u>Grid</u>	<u>Price</u>	<u>Pre-Sale Assessment</u>	<u>Ratio</u>
5376 Vincent Av	26-B4	370,000	37,093	10
3714 Effie St	35-A4	280,000	27,293	10
1628 Shenandoah	42-D3	319,000	30,558	10
12105 Ranchito	39-A5	333,000	34,610	10
17510 Mission B	7-D1	320,000	33,002	10
12431 Mulhollan	23-B6	1,450,000	139,523	10
235 Walnut Ct	28-B4	175,000	16,841	10
4431 Alpha St	36-F3	173,500	17,624	10
1920 Durango Av	42-D4	505,000	52,664	10
3547 E 2 St	45-C5	115,000	11,223	10
2331 S Cabrillo	78-F5	305,000	30,819	10
859 Wayne St	91-B6	190,000	18,149	10
8622 Wentworth	10-D2	336,000	33,434	10
1508 N Ave 56	26-C6	140,000	13,967	10
436 Los Altos A	38-D2	580,000	56,300	10
1649 Berkeley S	41-C5	360,000	35,523	10
810 N Bedford D	33-A5	2,800,000	311,593	9
222 E Foothill	28-F3	282,000	30,037	9
4942 Highland V	26-B5	178,000	20,104	9
3241 Earlmor Dr	42-B5	720,000	82,349	9
1672 Bunker Av	47-E4	16,000	18,537	9
809 E Foothill	87-C5	26,000	28,467	9
1285 Cresthaven	26-D6	450,000	49,762	9
430 S Wetherly	42-D2	582,000	63,877	9
1308 26 St	41-B5	365,000	40,623	9
1121 N Chicago	45-B2	147,500	15,926	9
333 Sycamore Rd	40-D5	685,000	78,898	9
1116 E Lomita A	25-D4	172,500	19,713	9
15861 Seabec Ci	40-C4	755,000	80,989	9
1111 La Cadena	28-C6	400,000	45,976	9
1755 N Los Robl	20-A6	160,000	17,022	9
800 S Tremaine	43-B2	950,000	103,590	9
1207 E Adams Bl	52-D1	85,000	9,919	9
1041 Somera Rd	32-D4	1,210,000	131,424	9
1218 Stratford	37-A2	463,000	51,855	9
3467 Meier St	49-E2	391,000	42,581	9
208 Violet Av	29-A3	187,000	20,371	9
9625 Holcomb St	42-C3	595,000	68,867	9
703 N Lucia Av	67-D2	385,000	44,932	9
1728 E 68 St	52-E5	83,000	9,136	9
25936 Pennsylv	73-C3	565,000	63,874	9
5843 2 Av	51-D4	182,500	21,283	9
1612 Sunset Pla	33-D3	630,000	70,145	9
853 Hauser Bl	43-A2	408,000	47,935	9
262 Roycroft Av	76-B5	407,000	44,278	9

<u>Address</u>	<u>Grid</u>	<u>Price</u>	<u>Pre-Sale Assessment</u>	<u>Ratio</u>
16783 Edgar St	40-B3	560,000	63,485	9
23400 Collins S	5-F6	350,000	39,443	9
9310 Sawyer St	42-C3	570,000	63,535	9
2111 Mozart St	45-A1	149,000	15,793	9
19310 Bloomfiel	81-C2	200,000	23,042	9
17357 San Ferna	7-E1	285,000	33,043	9
553 W Orange Gr	94-D1	119,000	13,446	9
462 Holland Av	36-B2	159,000	18,015	9
1612 S Stanley	42-F3	265,000	28,732	9
1022 Keniston A	43-B2	309,000	34,215	9
1560 Mathews Av	62-D5	800,000	91,705	9
1653 Smith St	94-C3	232,500	24,681	9
603 N Rexford D	33-B5	2,218,000	247,040	9
823 N Ave 53	36-B1	140,000	16,318	9
1228 Milan Av	37-A2	995,000	113,523	9
224 S Hamilton	42-E1	850,000	93,493	9
5326 El Monte A	38-E3	194,500	21,937	9
5338 Hillmont A	26-C4	240,000	29,515	8
2317 Clark Av	49-C4	298,000	39,445	8
10449 Holman Av	41-F2	950,000	113,915	8
8964 California	59-B2	135,000	17,885	8
11514 Forest Gr	38-E6	222,700	29,644	8
10575 Ayres Av	42-A4	425,000	54,652	8
2572 Nichols Ca	33-F1	500,000	63,353	8
21932 Carlerik	70-A5	189,000	24,677	8
2413 Frey Av	49-C4	331,500	40,749	8
223 La Verne Av	76-B6	328,000	38,660	8
12124 E 214 St	81-B4	275,000	36,492	8
6925 Beechfield	72-C4	523,500	68,450	8
275 Starlane Dr	19-D3	765,000	91,703	8
621 Sierra Dr	33-C5	1,750,000	225,363	8
26214 Eshelman	73-D4	298,000	39,495	8
3748 El Moreno	11-C5	280,000	35,000	8
4925 Biloxi Av	23-F2	367,000	47,151	8
859 Hartzell St	40-D4	515,000	62,310	8
714 N Ave 53	36-B1	170,000	20,988	8
5230 Edna St	36-E5	370,500	46,326	8
822 Crestmoore	49-D4	340,000	41,796	8
2608 Mayfield A	18-E2	230,000	29,447	8
1822 N Garfield	20-A6	125,000	15,793	8
2108 Glenview T	20-D5	675,000	81,644	8
324 E Colorado	29-B4	159,000	20,368	8
2416 W Alhambra	37-A3	252,000	32,258	8
10142 Fern St	47-C2	155,000	19,584	8
426 Randolph St	94-E1	130,000	16,841	8

<u>Address</u>	<u>Grid</u>	<u>Price</u>	<u>Pre-Sale Assessment</u>	<u>Ratio</u>
5126 Angeles Cr	19-B2	329,000	41,032	8
743 E 27 St	44-C6	97,000	12,791	8
219 E 94 St	58-B2	90,000	10,829	8
1120 Holly Av	28-D6	445,000	57,996	8
5168 Ellenwood	25-F4	265,500	32,909	8
1014 S San Mari	27-D6	1,230,000	153,764	8
14112 Attila R	40-E5	1,000,000	118,879	8
3326 E 2 St	45-C5	144,000	17,364	8
595 E Pasadena	94-F2	141,500	18,409	8
521 Meridian Te	36-C1	127,000	15,797	8
4736 La Madera	39-A4	278,000	34,863	8
190 San Miguel	26-D5	880,000	104,767	8
843 Chestnut Av	36-E1	230,000	29,386	8
1050 N Peck Av	62-D4	367,000	47,545	8
9346 Charrick D	11-A5	344,000	45,064	8
220 S Hamilton	42-E1	575,000	68,185	8
2232 Louella Av	49-D3	340,000	43,625	8
302 N Moore Av	46-B1	263,000	33,220	8
9726 Elizabeth	59-B3	137,000	16,189	8
5007 Haskell Av	22-B2	575,000	73,936	8
408 Euclid St	40-F5	865,000	107,645	8
3625 Woolwine D	45-C2	133,000	16,984	8
1942 E 76 St	52-E6	80,500	9,784	8
10710 Walnut Dr	9-F4	449,000	59,668	8
1080 Beverly Wy	20-C5	288,000	35,653	8
9047 Lloyd Pl	33-D5	360,000	47,415	8
619 Baylor St	40-B3	518,000	65,837	8
323 N Curtis Av	37-B4	228,000	30,035	8
319 Medio Dr	41-B3	848,500	100,720	8
2754 Mariquita	75-F6	255,000	32,259	8
660 N Eleanor S	94-F2	115,000	13,965	8
1060 Oakmont Dr	30-F6	1,600,000	211,383	8
2120 Linda Flor	32-C2	947,500	117,835	8
3412 Stockbridg	36-E5	178,000	23,244	8
4745 Halkett Av	37-F4	200,000	25,466	8
158 N Willaman	42-D1	845,000	110,389	8
5246 Stratford	26-B1	227,000	27,030	8
4026 East Bl	50-A2	425,000	55,904	8
2079 W 262 St	73-D3	475,000	57,268	8
525 Hawthorne S	25-B4	208,000	25,959	8
1829 E Californ	27-D5	774,500	96,015	8
721 N Gardner S	34-A5	315,000	39,573	8
127 N Bowling G	41-B2	715,000	86,869	8
8967 David Av	42-D4	295,000	38,268	8

<u>Address</u>	<u>Grid</u>	<u>Price</u>	<u>Pre-Sale Assessment</u>	<u>Ratio</u>
645 30 St	62-C5	448,000	55,512	8
1256 Neola St	26-C5	180,000	23,963	8
129 N Marguerit	37-B4	244,500	30,297	8
1314 El Vago St	19-B1	530,000	68,320	8
1446 E 21 St	44-D6	90,000	11,745	8
4528 W 164 St	62-F4	190,000	24,418	8
1203 Leigh Ct	75-E2	80,000	10,175	8
285 Nieto Av	76-B5	830,000	98,367	8
708 Wildomar St	40-C3	681,000	85,432	8
3537 Redwood Av	49-D2	295,000	38,788	8
3933 Elrovia Av	38-F6	205,000	27,290	8
406 E Fairview	37-E4	205,000	25,727	8
4265 Campbell D	49-F3	280,000	35,912	8
16117 Grevillea	62-F4	178,500	22,195	8
965 Fallen Leaf	28-C3	1,200,000	156,249	8
1525 N Courtney	33-F3	450,000	53,425	8
766 Almar Av	40-C3	645,000	78,115	8
7357 Willoughby	34-A4	210,000	25,464	8
596 Tigertail R	32-B6	1,630,000	214,786	8
4300 Homer St	36-B4	150,000	18,409	8
809 Glenmont Av	41-E1	1,280,000	156,247	8
952 E 22 St	44-C6	95,500	11,876	8
522 California	56-C6	390,000	50,421	8
623 14 St	62-B4	640,000	78,770	8

RESIDENTIAL SALES IN MARINA DEL REY,
VENICE, AND OCEAN PARK:
JUNE - DECEMBER, 1989

<u>Address</u>	<u>Grid</u>	<u>Price</u>	<u>Pre-Sale Assessment</u>	<u>Ratio</u>
126 Fraser Av	49-A2	560,000	32,519	17
317 Strand St	49-A2	465,000	28,074	17
914 Nowita Pl	49-D3	302,000	23,505	13
832 Nowita Pl	49-C3	302,000	22,787	13
354 6 Av	49-C3	120,000	10,829	11
441 Sherman Can	49-C4	465,000	41,011	11
570 Rialto Av	49-C4	305,000	28,991	11
2626 Highland A	49-B2	433,000	40,975	11
1933 Euclid St	49-B1	407,000	41,407	10
527 Westminster	49-C3	160,000	16,186	10
1131 Maple St	49-B2	510,000	50,940	10
228 Market St	49-C4	350,000	36,177	10
2325 Beach Av	49-C4	300,000	31,209	10
410 Carroll Can	49-C4	520,000	49,682	10
1808 Marine St	49-C2	522,700	55,906	9
3467 Meier St	49-E2	391,000	42,581	9
624 Boccaccio A	49-D4	265,000	29,121	9
2404 Cloverfiel	49-C1	400,000	52,012	8
4609 McConnell	49-F4	295,000	38,400	8
1024 Pine St	49-B2	385,000	49,894	8
1801 Hill St	49-C1	490,000	64,658	8
2017 Pearl St	49-C1	355,000	44,041	8
12749 Indianapo	49-D1	417,500	55,253	8
1427 Hill St	49-C2	470,000	56,795	8
1711 Glyndon Av	49-D2	332,500	40,750	8
2320 Walnut Av	49-D3	255,000	30,425	8
12651 Woodgreen	49-E2	597,900	72,238	8
2317 Clark Av	49-C4	298,000	39,445	8
2413 Frey Av	49-C4	331,500	40,749	8
822 Crestmoore	49-D4	340,000	41,796	8
2232 Louella Av	49-D3	340,000	43,625	8
3537 RedwoodAv	49-D2	295,000	38,788	8
4265 Campbell D	49-F3	280,000	35,912	8
3903 Frances Av	49-E3	250,000	33,302	8
3556 Inglewood	49-F1	425,000	56,035	8
2603 Cloverfiel	49-C1	400,000	52,353	8
37 26 Av	49-C5	460,000	56,033	8
1423 Ashland Av	49-C2	432,000	54,337	8
13113 Venice Bl	49-E3	205,000	29,774	7
3419 Moore St	49-D2	445,000	64,594	7
12506 Indianapo	49-E1	450,000	63,746	7
11830 Palms Bl	49-F1	375,000	56,429	7

<u>Address</u>	<u>Grid</u>	<u>Price</u>	<u>Pre-Sale Assessment</u>	<u>Ratio</u>
937 Lake St	49-C3	280,000	40,358	7
2207 Glyndon Av	49-D3	285,000	40,226	7
13036 Warren Av	49-D2	455,000	63,876	7
12507 Brooklake	49-E1	365,000	53,946	7
3789 RosewoodA	49-E3	265,000	39,444	7
3461 Grand View	49-E1	900,000	125,020	7
3788 Boise Av	49-E2	320,000	45,327	7
1653 Bryn Mawr	49-C2	530,000	75,706	7
3720 Wasatch Av	49-E2	400,000	59,954	7
1030 Vernon Av	49-C2	399,000	56,687	7
12526 Mitchell	49-F3	225,000	34,610	7
12426 Stanwood	49-E1	489,500	74,327	7
11836 Palms Bl	49-F1	417,500	64,006	7
1204 Maple St	49-B2	445,000	60,032	7
3535 Greenwood	49-E2	295,000	40,878	7

* * *

[EXHIBITS C, D, E, F, and G Omitted in Printing]

* * *

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

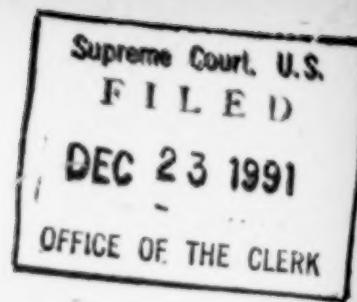
I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on December 23, 1991, I served the within *Joint Appendix* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
Supreme Court
One First Street, N.E.
Washington, D.C. 20543
(By Express Mail: original
and forty copies)

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3580 Wilshire Boulevard
9th Floor
Los Angeles, California 90010

I declare under penalty of perjury that the foregoing is true and correct. Executed on December 23, 1991, at Los Angeles, California.

Peter Sandanavicius
(Original signed)



No. 90-1912

In the Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County, and the COUNTY OF LOS
ANGELES,

Respondents.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEAL OF THE STATE OF CALIFORNIA

PETITIONER'S BRIEF ON THE MERITS

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Petition for Certiorari Filed May 28, 1991
Certiorari Granted October 7, 1991

QUESTIONS PRESENTED

In *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989), this Court held that a local county assessor's practice of assessing and taxing recently acquired properties based on their acquisition price, while permitting comparable but longer-held properties to retain old and significantly lower outdated assessments with negligible periodic adjustments (the so-called "welcome stranger" assessment method) violated the Equal Protection Clause of the Fourteenth Amendment. California's Proposition 13 legislatively imposes a welcome stranger scheme on the State's *ad valorem* property tax system.

This case presents two questions:

1. Does California's *ad valorem* property tax system as modified by Proposition 13's welcome stranger provision violate the Equal Protection Clause by commonly taxing newly purchased property 8, 10, 12, 15, and 17 times higher than like property owned by long-time owners, with no possibility of ever seasonably attaining rough equality in tax treatment?
2. Does Proposition 13's allocation of property tax benefits and burdens according to length of homeownership require that the welcome stranger provision be subject to a heightened scrutiny analysis and invalidated as violative of the right to travel?

OPINIONS BELOW

The opinion of the Court of Appeal of the State of California is reported at 225 Cal.App.3d 1259, 275 Cal.Rptr. 684, and is reprinted in Appendix A to the Petition for Certiorari (hereinafter "Pet. App.").

The California Supreme Court's unreported denial of review is reprinted at Pet. App. B1.

JURISDICTION

The judgment of the California Court of Appeal was entered December 3, 1990. The timely petition for review of petitioner Stephanie Nordlinger was denied by the California Supreme Court on February 28, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTES/CONSTITUTIONAL PROVISIONS INVOLVED

1. Article XIII of the California Constitution provides:

Sec. 1. Unless otherwise provided by this Constitution or the laws of the United States:

(a) All property is taxable and shall be assessed at the same percentage of fair market value. When a value standard other than fair market value is prescribed by this Constitution or by statute authorized by this Constitution, the same percentage shall be applied to determine the assessed value. The value to which the percentage is applied, whether it be the fair market value or not, shall be known for property tax purposes as the full value.

(b) All property so assessed shall be taxed in proportion to its full value.

2. The full text of Article XIII A of the California Constitution (popularly known as "Proposition 13") is

set forth at Pet. App. C1. Relevant portions of the text include the following:

Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property.

Section 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation.

(b) The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent for any given year or reduction as shown in the consumer price index or comparable data for the area under taxing jurisdiction, or may be reduced to reflect substantial damage, destruction or other factors causing a decline in value.

3. United States Constitution, Article XIV, Section 1 provides:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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No. 90-1912

In the Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County, and the COUNTY OF LOS
ANGELES,

Respondents.

PETITIONER'S BRIEF ON THE MERITS

STATEMENT OF THE CASE

A. Proposition 13's Operation.

The tax assessment provisions of Article XIII A of the California Constitution force petitioner Stephanie Nordlinger to pay property taxes many times higher than her neighbors who live in identical houses purchased in earlier years. Under Article XIII A, long-time property owners pay very low property taxes that reflect outdated low assessments, while new buyers are saddled with a disproportionate share of the property tax burden. Tax assessment systems like Article XIII A have been labeled "welcome stranger" schemes because, over time, they shift the overwhelming majority of increases in future property tax revenues onto new buyers (the "strangers"),

who are "welcomed" by the existing owners who pay only negligible increases.

Under a traditional *ad valorem* property tax system, property is assessed at its current market value, and then a tax rate is applied to the assessment. If the property either increases or decreases in value, the property tax assessment is adjusted to reflect the change. Article XIII A works in this traditional manner except that it limits any increases in the assessment of real property to the lesser of 2% or the rate of inflation, until the property changes ownership.¹ If property declines in market value below the initial assessment, Article XIII A operates like a traditional *ad valorem* system: the property is reassessed downward to reflect its actual value. As in a current market value system, Article XIII A provides that newly purchased property is reassessed at its actual market value, which usually is the same as its purchase price.² New construction also triggers a reassessment, but only of the newly constructed portion of the property. See Cal. Const. art. XIII A, §§1 and 2 (West Supp. 1991).

B. Property Tax Assessment Disparities Resulting From Proposition 13's Operation.

After many years of saving, in November 1988 petitioner Stephanie Nordlinger purchased her first

¹Section 1 of Article XIII A generally limits the maximum property tax rate to 1% of assessed value. Petitioner Nordlinger challenges only the assessment provisions of Article XIII A, and does not challenge the validity of the 1% tax rate cap.

²Rather than assessing properties purchased before 1975 at their purchase value, Proposition 13 rolled back assessments for all these properties from their value in 1978 (when Proposition 13 was enacted) to their 1975-76 values.

home in the modest Baldwin Hills section of Los Angeles, for \$170,000. Joint Appendix ("J.A.") 60. Her 1,100-square-foot home, located in a post-World War II tract development, was priced significantly less than the median-priced home in Los Angeles County at that time. J.A. 47, 60. When she purchased her home, her more-fortunate neighbors, who had bought virtually identical homes before 1975, were paying property taxes averaging only \$376 annually, reflecting their 1975 base year assessments³ plus the small 2% annual increase that Article XIII A allows. J.A. 18-20, 29-30, 64. In contrast, petitioner Nordlinger was taxed \$1,700 in 1989 (her first full year of paying taxes on her home), reflecting reassessment to a new base year of 1988. J.A. 18-20, 62.

Over the first ten years of owning her home, petitioner Nordlinger's property taxes will approach \$19,000, while her neighbors who bought comparable homes in 1975 will pay only \$4,100. Thus, solely because she did not (indeed could not) purchase her home until 1988, during the next decade Nordlinger will pay nearly \$15,000 more in property taxes than her neighbors who live in comparable houses and receive the same public services and facilities.

Petitioner Nordlinger's situation is far from unusual. For example, a 1989 homebuyer in a rapidly appreciating neighborhood in Santa Monica paid 1989 property taxes of \$4,650, while his neighbors who bought comparable homes in the mid-1970s paid as little as \$270 for the 1989 tax year. J.A. 66, 76-78. The recent Santa Monica purchaser will thus pay the tax collector almost \$51,000 during the next decade for exactly the same public

³The term "base year" refers to the purchaser's year of acquisition or 1975, whichever is later in time.

services and facilities that his neighbors who own virtually identical homes will get for the bargain price of \$3,000 — a disparity of 17:1 and a difference of \$48,000!

Petitioner's extensive studies presented below, based largely on respondent Assessor's records, document the common property tax disparities that Proposition 13 creates throughout Los Angeles County.⁴ For example, 1989 purchasers of homes in a broad range of Los Angeles County neighborhoods commonly pay taxes 8, 10, 12, 15, and 17 times higher than those paid by long-time homeowners with 1975 base years in the same neighborhood. J.A. 20-24, 29-32, 66-67, 76-78, 86-92. These disparities are extremely common because, as of 1989, well over a third of all Los Angeles County homes still retained 1975 base year assessments, and fully half retained 1978 base years. J.A. 37, 46. Recent Los Angeles County purchasers of other types of properties are also commonly subject to extremely disproportionate tax burdens. Residential income (apartment) and commercial property tax disparities commonly range between 8:1 and 9:1, reaching as high as 11:1. J.A. 68-70, 82-

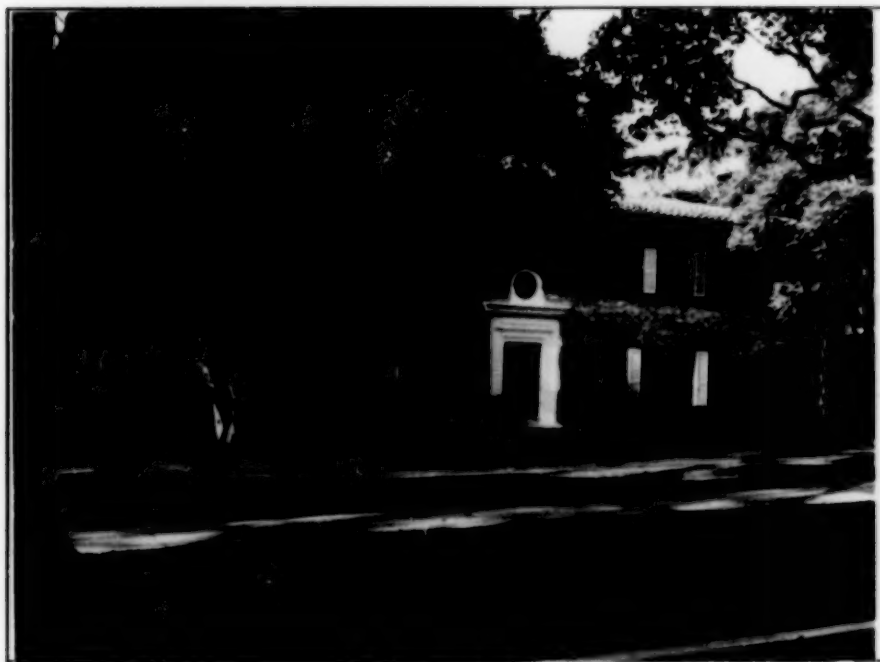
⁴These studies, performed by economist David Gold, include a "County Cross-Section Study" and a "Neighborhoods Study." Together, the studies analyzed more than 10,000 recent property sales. The County Cross-Section Study analyzed by computer every property sale in Los Angeles County in August 1989. For each sale, it calculated the disparity between the new owner's assessment and the prior owner's assessment for the very same property, by comparing the sales price (the new owner's assessment) to the assessment immediately before the sale (the prior owner's assessment). J.A. 66, 76-78.

The Neighborhoods Study intensively researched specific neighborhoods. For various neighborhoods, it compared the assessments on recent buyers and long-time owners of comparable homes, recording disparity levels seen repeatedly between new and long-time owners. The computer analysis of these neighborhoods was then cross-checked with field visits by professional appraisers. J.A. 17-24, 67, 76.

85. The tax disparities on comparable vacant lots reached 25:1, 50:1 and more, and even a staggering 583:1. J.A. 68.⁵ See Tables and Graphs summarizing common single family residential and other property tax disparities in various Los Angeles County neighborhoods in 1989, based on the exhibits presented below, in the Appendix to this brief ("Appendix") at A1-A10.

Glaring inequities among property owners are not, by any means, confined to the same neighborhoods. Inequities between people living in different neighborhoods are equally stark. For example, in 1989, after only a dozen years of Proposition 13's operation, the long-time owner of a stately 7,800-square-foot, seven-bedroom mansion on a huge lot in Beverly Hills (among the most luxurious homes in one of the most expensive neighborhoods in Los Angeles County), depicted in Photograph A below, paid *less* property tax annually than the new homeowner of a tiny 980-square-foot home on a small lot in an extremely modest Venice neighborhood, depicted in Photograph B below. J.A. 24, 70.

⁵Undeveloped lots showed by far the greatest disparities in the taxes paid by new versus long-time owners. Many raw lots, considered unbuildable in 1975, are now ready for development, due to intervening changes in zoning, accessibility and/or technology, making them now worth hundreds of thousands of dollars and more.



PHOTOGRAPH A - BEVERLY HILLS HOME



PHOTOGRAPH B - VENICE HOME

Likewise, petitioner Nordlinger's 1988 property tax assessment on her unpretentious Baldwin Hills tract home is almost identical to that of a pre-1976 owner of a fabulous beach-front Malibu residential property worth \$2.1 million, even though her property is worth only 1/12th as much as his. J.A. 24, 70. Indeed, recent homebuyers who can afford only tiny bungalows in some of Los Angeles County's most crime-ridden and depressed areas in Watts and Compton must pay as much in property taxes as owners of spacious \$1 million homes in the wealthy sections of Santa Monica, Pacific Palisades and Beverly Hills who purchased at least thirteen years ago or earlier. J.A. 23, 66, 67, 86-92.

Ironically, because values have increased most dramatically in affluent sections of Los Angeles County, Proposition 13 bestows its lowest effective tax rates on the community's wealthiest citizens. For example, in Beverly Hills, where properties have appreciated by as much as 1,600%, long-time homeowners pay an effective tax rate of only 1/12th of 1% of the present value of their homes. By contrast, long-time owners in Watts pay an effective tax rate more than double the Beverly Hills rate, 1/5th of 1% of their homes' value. See Appendix at A2, A4.

As inflation has diluted the value of the dollar, Proposition 13's assessment provisions have delivered *annual real tax cuts* to long-time owners, because inflation has averaged 6% annually in the Los Angeles-Long Beach area between 1978 and 1989, far exceeding the 2% maximum annual upward adjustment allowed by Proposition 13. J.A. 57. Thus, long-time owners in Los Angeles have enjoyed a 38% tax cut in real dollars between 1978 and 1989, and their real taxes continue to fall. J.A. 27.

These annual real tax cuts for long-time owners are subsidized entirely by new buyers who must pay an enormous percentage of the annual increases in overall property tax revenues. Between 1978 and 1989, property tax revenues from Los Angeles County single family homes increased at an average of 11.67% annually, so that by 1989, such revenues had increased by \$1.23 billion over the tax level that homeowners paid in 1978. Post-1978 buyers paid for fully 95% of this total increase, even though they comprised only about 51% of all 1989 homeowners. A massive redistribution of wealth is resulting from this tax shift, so that by 1989, forced subsidies from post-1978 homebuyers to pre-1978 homeowners in Los Angeles County reached well into the hundreds of millions of dollars. See Appendix at A8, A9, A10.

Proposition 13's dramatic inequities will continue to grow even worse. Even if the appreciation rate of Southern California real estate permanently plunges to the level of the most conservative investments, residential disparities greater than 26:1 will be commonplace within ten years. J.A. 26. If, instead, property continues to appreciate at the rate it has since the Proposition 13 baseline year of 1975, continuing the pattern of boom and lull that has occurred during that time, within ten years many new homebuyers will be paying 70 to 80 times the taxes of their stay-put neighbors. J.A. 25-26, 70. See Appendix at A5.

C. Proceedings Below.

Petitioner Nordlinger filed her complaint on September 18, 1989 in Los Angeles County Superior Court seeking a declaratory judgment that, under this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S.

336 (1989), Proposition 13's welcome stranger assessment method violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. After exhausting her administrative remedies, she amended her complaint to include a claim for refund of unconstitutionally collected property taxes. J.A. 2-13.

When respondent Los Angeles County and its Assessor⁶ (hereinafter "Assessor") demurred to the complaint (J.A. 14), Nordlinger opposed the demurrer and sought leave to amend her complaint to include additional factual and legal allegations. In support of her request to amend, Nordlinger presented the extensive studies described above, documenting tax disparities throughout Los Angeles County based largely on Assessor's records.⁷ J.A. 16-86. On January 29, 1990, the superior court sustained Assessor's demurrer without leave to amend on the ground that, even if petitioner's complaint were supplemented with the extensive factual materials, she could not state a claim because, notwithstanding *Allegheny*, it was bound by the California Supreme Court's 1978 decision in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 583 P.2d 1281 (1978). Pet. App. D1 (minute order). In *Amador*, the state supreme court had upheld Proposition 13 just after its passage against facial equal protection and right to travel challenges, long before the extreme disparities of the

⁶Then-Assessor John J. Lynch has been replaced by his successor, Kenneth Hahn.

⁷California law permits courts to consider the factual allegations contained in declarations supporting requests for leave to amend the complaint. See, e.g., *Minsky v. City of Los Angeles*, 11 Cal.3d 113, 520 P.2d 726 (1974).

past thirteen years had developed. The *Amador* decision was not appealed to this Court.

Nordlinger appealed the dismissal of her case, and the California Court of Appeal affirmed the ruling. *Nordlinger v. Lynch*, Pet. App. A1. The court concluded that it was still bound by *Amador*. It found *Allegheny* inapposite because Article XIII A legislatively mandates local assessors to use its welcome stranger tax assessment system, while the Webster County system struck down in *Allegheny* had been administratively implemented by a local assessor in a state whose legislation embodied a current market value system. Pet. App. A16-A21. Further, the court denied Nordlinger's constitutional right to travel claims because, it ruled, any benefits bestowed by California's welcome stranger system on long-time residents (as opposed to long-time homeowners) were merely "incidental" to Article XIII A's approach. Pet. App. A25.

In discussing Nordlinger's extensive documentation of common countywide disparities, however, the court observed that "it is not reasonably disputable that article XIII A has resulted in gross disparities in the assessments of properties with comparable market values. . . ." and took judicial notice of those disparities. Pet. App. A12. Explicitly recognizing the manifest "unfairness which has developed from the acquisition value system" since 1978, the court also suggested that it would be "appropriate" for the California Supreme Court to "revisit" its dicta in *Amador* that, once it became operational, Proposition 13 might turn out to be fairer than a current value system. Pet. App. A16. But because it was constrained by *Amador*, such revisiting was not within the intermediate court's power. Pet. App. A17. The state supreme court

denied without comment petitioner's request for review on February 28, 1991. Pet. App. B1.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

It is no mystery why voters support welcome stranger tax policies: by so doing they reduce their own taxes while forcing newcomers to pay ever-increasing sums to finance the growing demands of government. For years, locally elected tax assessors discreetly implemented this popular but abusive system by failing to reassess properties already on the tax rolls while assessing new purchasers at full market value. As inflation drives up property values, the burden of taxation falls more and more heavily on recent purchasers of property — enabling long-time property owners to enjoy the benefits of swelling tax revenues while paying a mere fraction of the taxes imposed on their newly arrived neighbors.

Three terms ago, this Court put a halt to this practice. In *Allegheny*, 488 U.S. 336 (1989), the Court unanimously held that assessing comparable properties at different levels, based on obsolete historical values established at the time of acquisition, violates the Equal Protection Clause of the Fourteenth Amendment. Applying rational basis scrutiny, the Court found that such assessment policies discriminate against recent purchasers without any basis in "reasonable consideration of difference or policy." *Id.* at 344.

The only difference between this case and *Allegheny* is that the welcome stranger system in *Allegheny* was adopted informally by the locally elected assessor, while in this case it was adopted openly by the people in a referendum. The *Allegheny* Court explicitly referred to

the California system in a footnote, leaving the issue open for future decision. 488 U.S., at 344. The question in this case, accordingly, is whether the same principles of law that forbid discriminatory welcome stranger systems when adopted informally by an assessor apply when the system is formally incorporated into state law.

In Section I, we contend that the equal protection principles of *Allegheny* apply with equal force to all discriminatory tax systems, whether instituted by legislation, referendum, or administrative practice, and whether authorized, prohibited, or tolerated by state law. No state can justify its discrimination by the mere device of embedding the discrimination in law. If a welcome stranger system is unconstitutional when adopted by an assessor in Webster County, West Virginia, it is equally unconstitutional when adopted by a referendum in the State of California. To rule otherwise would inappropriately interject the federal courts into issues of state law and administration, an idea this Court has uniformly rejected.

In Section II, we apply the constitutional standard of *Allegheny* to the California system. Since the two systems are functionally identical, the conclusion, not surprisingly, is the same. The Equal Protection Clause demands that like properties be treated alike, and that any differences in taxation have a reasonable justification. Taking advantage of politically powerless groups is not a legitimate justification. From any perspective other than beggar-thy-neighbor, the welcome stranger policy is irrational. The use of outmoded valuations, based on a transaction that may have occurred fifteen years ago, bears no relationship to ability to pay, level of government services, or any other theory of equity or efficiency in taxation. Instead, it leads to wildly inequitable results (owners of modest bungalows paying

more in taxes than Beverly Hills mansion owners), distortions of the economy (established businesses gaining a competitive edge over new competitors), and multi-generational inhibitions on mobility (the system penalizes those who wish to sell and move). No disinterested person would devise such a system.

Moreover, in light of effects on the right to travel and the discriminatory burdens the system places on newcomers to the state, more than mere rational basis is required under the Equal Protection Clause. In Section III, we demonstrate that the welcome stranger provision of Article XIII A cannot possibly satisfy the heightened scrutiny demanded by *Zobel v. Williams*, 457 U.S. 55 (1982), and this Court's other precedents regarding discrimination against newcomers.

The Court's attention to the welcome stranger problem could not be more timely. As the court of appeal candidly acknowledged (Pet. App. A27 n.11), it is virtually impossible to dislodge a welcome stranger system through political channels once it is in place. Welcome stranger policies are universally recognized by professional bodies of assessors and tax experts as unfair and abusive, but the political allure is overwhelming. It is the old, old story of a politically dominant majority privileging itself at the expense of an inchoate and politically unrepresented group — and of the long-term well being of the community. Such a situation calls out for constitutional intervention.

Now that *Allegheny* has prohibited the quiet introduction of welcome stranger policies through administrative practice, states around the country will be eyeing the precedent of California. Can the same result be achieved by different means? Much disruption

and unfairness can be prevented if the temptation is removed before others succumb.

ARGUMENT

I.

CALIFORNIA'S "WELCOME STRANGER" PROPERTY TAX SCHEME CANNOT BE DISTINGUISHED SUBSTANTIVELY OR PROCEDURALLY FROM THE WEBSTER COUNTY ASSESSMENT PRACTICE FOUND UNCONSTITUTIONAL IN ALLEGHENY.

A. Welcome Stranger Schemes Shift a Disproportionate Share of the Property Tax Burden From Long-Time Property Owners to Newcomers, Precluding the "Seasonable Attainment of a Rough Equality Among Similarly Situated Taxpayers" Required by *Allegheny*.

The political appeal of a welcome stranger system stems from the fact that it limits unpopular across-the-board tax increases on existing property owners, who constitute a very high percentage of voters. Existing owners pay relatively low taxes based on rapidly outdated, artificially low assessed values, while recently purchased properties are reassessed at higher current market values and, consequently, their owners must bear a vastly disproportionate share of future tax revenue increases.⁹ This political appeal has resulted in

⁹See Note, *Federal Accountability for Local Tax Assessment Schemes — An Equal Protection Overlay: Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 43 Tax Law. 457, 471 (1990). See also K.K. Baar, *Property Tax Assessment Discrimination Against Low Income Neighborhoods*, 1 Prop. Tax J. 1, 6 (1982) ("political reality often forces [assessors] not to increase assessments in a manner which will stir strong political opposition"). Notably, despite their popularity, few assessors publicly acknowledge using welcome stranger systems. See *Allegheny*, Brief for the International Association of Assessing Officers as *Amicus Curiae*, at 9.

widespread use of the scheme by local assessors.⁹ Local governments are assured the fiscal resources to maintain and improve local services, while assessors are more likely assured re-election.

Despite the political popularity of welcome stranger systems, professional assessor associations and scholars have strongly condemned them as "inherently inequitable" and "plainly unacceptable," because they invariably result in tax disparities between similarly situated property owners.¹⁰ State courts, too, have ruled that these practices are so fundamentally unfair as to

⁹See W. Hellerstein & J.H. Peters, *Recent Supreme Court Decisions Have Far-Reaching Implications*, 70 J. Tax'n 306, 308-09 (1989); R.J. Glennon, *Taxation and Equal Protection*, 58 Geo. Wash. L. Rev. 261, 262 (1990); R.D. Pomp, *What Is Happening to the Property Tax?*, 15 Assessors J. 107, 121 n.61 (1980).

¹⁰See, e.g., Int'l Ass'n of Assessing Officers, *Improving Real Property Assessment — A Reference Manual* (1978), at 331 (welcome stranger reassessment practices are "plainly unacceptable"); Int'l Ass'n of Assessing Officers, *Property Tax Limit Legislation: An Evaluation*, 14 Assessors J. 129, 146, 152 (1979) (the inherently inequitable welcome stranger system's especially harsh impacts and disparities are the "least desirable" method of limiting the property tax). See also R.F. Kilmer, *The Legal Requirements for Equality in Tax Assessments*, 25 Alb. L. Rev. 203, 206 (1961); Comment, *Real Property Tax Assessment: A Look at Its Administration Practices and Procedures*, 38 Alb. L. Rev. 498, 511 (1974); Note, *Hellerstein v. Assessor of the Town of Islip: A Response to Inequities in Real Property Assessments in New York*, 27 Syracuse L. Rev. 1045, 1061 (1976).

violate applicable state and federal constitutional provisions.¹¹

In *Allegheny*, 488 U.S. 336 (1989), this Court considered for the first time whether a welcome stranger property tax assessment system that resulted in gross disparities among similarly situated properties and taxpayers violates the Equal Protection Clause. There, between 1975 and 1986, the Webster County assessor made minimal across-the-board adjustments in the assessments of properties that had not been recently sold, raising assessed values on these properties by only 10% in 1976, 1981, and 1983, respectively. Upon sale, however, the assessor uniformly reassessed properties to current market value based upon the declaration of value filed at the time of transfer. Over time, this scheme "resulted in gross disparities in the assessed value of generally comparable property." *Allegheny*, 488 U.S., at 338. The petitioners' properties, for example, were assessed and taxed at roughly 8 to 20 and 35 times, respectively, that of comparable properties. 488 U.S., at 341.

Although the West Virginia Supreme Court of Appeals ruled that the assessor's welcome stranger practice did not violate state law, this Court unanimously

¹¹ See, e.g., *Township of West Milford v. Attorney General of New Jersey*, 120 N.J. 354, 361, 576 A.2d 881, 885 (1990) (township's "very undesirable" welcome stranger assessment practice violates state and federal equal protection guarantees); *Krugman v. Board of Assessors of the Village of Atlantic Beach*, 141 A.D.2d 175, 533 N.Y.S.2d 495 (1988) (selectively reassessing only recently sold properties serves no legitimate governmental purpose and has no rational basis); *Duval v. City of Manchester*, 111 N.H. 375, 286 A.2d 612 (1971) (invalidating inequitable reassessment of plaintiff's recently bought property, while 50% to 60% of all other property had not been reassessed for 20 years). See also 1978 Idaho Att'y Gen.' Ops. 148 (proposed voter initiative providing for a welcome stranger reassessment scheme is "patently and impermissibly discriminatory" in violation of state constitution).

held that it violated the Equal Protection Clause. Writing for the Court, the Chief Justice acknowledged that the States have broad powers to impose and collect taxes and may "divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable." 488 U.S., at 344, citing *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526-27 (1959). But in Webster County's welcome stranger scheme, the Court could find no legitimate classes or distinctions based on "reasonable consideration of difference or policy." 488 U.S., at 344-45.

The Court stressed that "the fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings." 488 U.S., at 346. Webster County's assessment practices forced one group of disfavored taxpayers (new buyers) to pay taxes on current full market values based on their acquisition prices. In contrast, another otherwise indistinguishable and "similarly situated" group (existing owners) paid far lower taxes based on infrequent across-the-board reassessments that were woefully inadequate to "equalize the differences in proportion between the assessments of a class of property holders." 488 U.S., at 343. The defect in this practice was not that one method of appraisal (review of recent deeds) was used for one group and a different method (periodic across-the-board adjustments) for the other group. Rather, the constitutional flaw was that the assessor's across-the-board adjustment policy was not, by any means, designed to equalize assessments within comparable classes of taxpayers over a short, transitional period of time. The assessor's practices thus failed to meet the federal constitutional requirement — the "seasonable attainment of a rough equality in tax treatment of similarly situated property owners." 488 U.S., at 342-43.

B. California's Welcome Stranger Property Tax System Not Only Precludes the "Seasonable Attainment of a Rough Equality" Between Similarly Situated Taxpayers, It Guarantees Increasing Inequities Between Such Taxpayers.

Article XIII A's operation is nearly identical to the Webster County assessment method. As in Webster County, California bases property assessments on fair market value as of the most recent date of purchase. And, like the Webster County system, Proposition 13 drastically limits annual increases in assessments, 2% in California and approximately 3% in Webster County (10% every three years), until the property changes ownership.

The result, under both systems, is that the property of long-time owners is assessed at dramatically lower levels than recently purchased property. Indeed, because it is imposed by legislative mandate now fixed in the State Constitution, Article XIII A operates in a more inflexible, even more harshly discriminatory way than the Webster County system invalidated in *Allegheny*. In West Virginia, assessors at least possessed the discretion to equalize tax assessments, although the Webster County assessor chose not to exercise that discretion. In California, by contrast, Proposition 13 freezes forever the maximum annual adjustment at a scant 2% — a figure apparently chosen for its political appeal, rather than having any theoretical or practical nexus to projected levels of inflation or to projected needs for increased local government revenues. As a practical matter, Article XIII A's fixed constraints thereby make it impossible for local assessors *ever* to meet the constitutional standard of seasonably attaining rough equality among similarly situated taxpayers.

The inequitable neighbor-to-neighbor disparities resulting from Proposition 13 are already fully comparable to those resulting from the constitutionally deficient Webster County system, and will inevitably worsen. By 1989, disparities among owners of nearly identical homes in Los Angeles County commonly reached 10:1, 12:1, 15:1 and higher. *See* Appendix A1. Disparities among owners of virtually indistinguishable commercial, industrial and residential income (apartment) properties commonly reached similar levels, while disparities among vacant lots exceeded 25:1 and even 50:1 and more.¹² *See* Appendix A6, A7.

While the Proposition 13 disparities are comparable to those in Webster County and continue to increase, the inequitable shift in the tax burden that has already taken place is vastly larger than any in Webster County. In Los Angeles County, for example, homeowners with 1978 and earlier base years, who in 1989 comprised about half of all present owners, were paying only 5% of the \$1.23 billion countywide increase in taxes imposed on single family residences over the 1978 tax levels, while post-1978 buyers, who comprised the other half of such owners, paid a staggering 95% of the increase. *See* Appendix A8-A10. The newest buyers are burdened most heavily, but post-1978 buyers as a group pay subsidies already totalling hundreds of millions of dollars annually

¹²Gross disparities like these have become so commonplace in Los Angeles County that the intermediate court readily took judicial notice of them. *Nordlinger*, Pet. App. A12. Similar disparities are now prevalent throughout California. *See, e.g., R.H. Macy & Co., Inc. v. Contra Costa County*, 226 Cal.App.3d 352, 276 Cal.Rptr. 530 (1990), Petition for Certiorari, at 4. *See also Prop. 13: Bless It, Damn It*, San Francisco Examiner, February 11, 1990, at A-1; *Prop. 13: How Unkind a Cut?* San Jose Mercury News, May 15, 1988, at 14; *Solutions Compound Inequality — Uneven Tax Burden Is Legacy of Reform*, Sacramento Bee, May 15, 1988, at A22.

to the highly favored owners with 1978 and earlier base years.¹³ Proposition 13 subjects commercial, industrial and apartment properties to similar shifts. These shifts force new businesses to pay huge annual subsidies to their long-established competitors.

Furthermore, unlike Webster County, California has added exceptions to the reassessment-upon-transfer provision of Article XIII A that vastly compound its discriminatory impacts. Section 2(a) allows California homeowners over 55, who sell their principal residences (and realize their gains), to carry their low base year assessments with them to any replacement residences. Moreover, section 2(h) exempts from the change-of-ownership provision any transfer of a principal residence

¹³A similar phenomenon has occurred statewide. By 1988, about 2 million homes statewide still retained a 1975 base year — about 44% of all owner-occupied residences. Owners of these homes paid only about \$1.05 billion in property taxes in 1988-89, or only 25% of the total paid by homeowners. The remaining 2.5 million homeowners (the 56% who bought after 1975) paid \$3.15 billion, or 75% of the total taxes paid by homeowners. See California Senate Commission on Property Tax Equity and Revenue, *Report to the Legislature* (1991) (hereinafter "1991 Senate Commission Report"), at 33. If the long-time owners had paid their fair share, or 44% of the total \$4.2 billion, their taxes would have been higher by \$800 million. Because owners with 1976-78 base years also enjoy subsidies, the total subsidy from post-1978 buyers to pre-1978 owners of owner-occupied residential housing approached \$1 billion, and \$3 billion for all types of property.

from parent to child, and up to \$1 million of the assessed value of any other property.¹⁴ Together, the exemptions permit persons who owned California property in the mid-1970s and ensuing years to retain their artificially low assessed values (and correspondingly low property taxes) indefinitely into the future, even as they move freely around the state once they attain age 55, and then pass their tax advantages on to succeeding generations in perpetuity. Thus, well into the next century and beyond, Article XIII A establishes privileged "castes" of favored property owners, whose highest tiers of membership extend only to those fortunate enough to have parents, grandparents and/or great-grandparents who were landowners in Proposition 13's early years.

Despite the nearly identical operation of Article XIII A and the Webster County assessment method, the court below attempted to distinguish them simply by labeling California's welcome stranger scheme an "acquisition value system," and by erroneously assuming that the legislature can, by bootstrap, simply declare otherwise similarly situated property owners to be in different "classes." *Nordlinger*, Pet. App. A20-A22. Calling the two systems different names, however, merely elevates

¹⁴The assessed value of the principal residence transferable to children without reassessment to current market value is unlimited. Because each parent may transfer up to \$1 million in assessed value of business property, both parents together can transfer up to \$2 million. The assessed value that can be transferred is determined, not by current values, but by the base year of acquisition. Thus, at 1989 values, which in Los Angeles County already averaged about 5 times more than 1975 values (J.A. 10, 35-38, 65), approximately \$10 million in business property purchased in 1975 or earlier could be transferred from one generation to the next without any reassessment.

form over substance.¹⁵ As this Court observed in *Allegheny*, in determining equality of tax treatment, “[i]t is not theory, but the impact . . . that counts.” *Allegheny*, 488 U.S., at 344, quoting *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944). Article XIII A’s welcome stranger provisions were not grounded on any mysterious new-found “principle” of basing property taxes on acquisition values rather than fair market values. See *State Board of Equalization v. Bd. of Supervisors*, 105 Cal.App.3d 813, 164 Cal.Rptr. 739 (1980) (Article XIII A is only a limit on California’s pre-existing market value *ad valorem* system, not a new system). Proposition 13 and the Webster County system both simply overlay a cap on future tax assessment increases for existing owners onto the pre-existing *ad valorem* property tax, coupled with routine revaluation of assessments for new buyers to full current market values.¹⁶

Further, the court below improperly assumed that the legislature could “declare” that every property owner is in a different acquisition value “class,” because he or she acquires land in a unique transaction at a unique point in time. The court reasoned that, unlike *Allegheny*, where all taxpayers were in the “same class” under its

¹⁵See California Senate Office of Research, *California’s Tax Burden: Who Pays?* (1990) (hereinafter “1990 Senate Office of Research Report”), at 72 (“The Webster County assessment system is strikingly similar to California’s property tax system.”); 1991 Senate Commission Report, at 32 (“Aptly, [section 2(a) of] Article XIII A has been called the ‘welcome stranger’ provision.”).

¹⁶Section one of Article XIII A expressly states that “[t]he maximum amount of any *ad valorem* tax on real property shall not exceed [1%] . . .,” and, under it, the property tax itself remains an *ad valorem* tax, i.e., a tax based on assessed values. Section two then places a ceiling of 2% on annual increases in the assessments underlying the *ad valorem* taxes that can be imposed on existing owners, and provides for reassessment to full market value for new buyers.

current market value system, Article XIII A legislatively creates a unique acquisition value “class” for each taxpayer to pay taxes based on “each owner’s assessment,” thus permitting the gross disparities found impermissible in *Allegheny*. *Nordlinger*, Pet. App. A22. This Court has rejected similar “bootstrap” arguments in the past.

A State cannot deflect an equal protection challenge by observing that in light of the statutory classification all those within the burdened class are similarly situated. The classification must reflect pre-existing differences; it cannot create new ones that are supported by only their own bootstraps. “The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes.”

Williams v. Vermont, 472 U.S. 14, 27 (1985), quoting *Rinaldi v. Yeager*, 384 U.S. 305, 308 (1966). The erroneous conclusion of the court below would effectively allow any state to draw any discriminatory classifications it likes — no matter how harsh — merely on the ground that the favored and disfavored taxpayers are legislatively deemed to be “different.”

C. Under the Equal Protection Clause, the Validity of a Classification Depends Entirely on Whether the Classification Is Rational; Thus, the Legislative Status of Proposition 13 Does Not Exempt It From This Court’s *Allegheny* Holding That Welcome Stranger Systems Are Unconstitutional.

In its *Allegheny* decision, this Court left open whether the manner in which the Webster County and California systems were adopted has constitutional significance:

We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as Proposition 13.

Allegheny, 488 U.S., at 344 n.4. Since the welcome stranger schemes of Webster County and of California are functionally identical, *Allegheny* controls this case unless the distinction between an “aberrational enforcement policy” and a formal state policy embodied in law has constitutional significance under the Equal Protection Clause. And indeed, this was the sole basis the court below offered for distinguishing *Allegheny*: “[*Allegheny*] merely prohibits the arbitrary enforcement of a current value assessment method.” *Nordlinger*, Pet. App. A3 (emphasis omitted). The intermediate court offered no explanation of why it considered this to be of constitutional significance. This Court’s decisions dictate that the distinction could have no constitutional relevance.

Under the Equal Protection Clause, the validity of classifications drawn by the states depends entirely on whether the classifications are rational or irrational, neutral or invidious. It does not matter whether the classifications are drawn by administrative officials, state legislatures, or the people in a referendum. Nor does it matter whether classifications drawn by state officials are authorized by, prohibited by, or tolerated by, state law. If a discriminatory policy instituted by low-level officials as a matter of administrative practice violates the Equal Protection Clause, it follows that the same policy must violate the Clause even if instituted

by the highest authority in the state. As this Court noted in *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352 (1918), the purpose of the Equal Protection Clause is “to secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” See also *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 736-37 (1964) (“the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance”); *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 448 (1985) (“[i]t is plain that the electorate as a whole, whether by referendum or otherwise, could not order. . . action violative of the Equal Protection Clause”). Contrary to the court decision below, the same equal protection standards apply to Article XIII A as apply to the practices of the Webster County assessor regardless of whether the Webster County policy was authorized by West Virginia state law.

The welcome stranger policy was struck down in *Allegheny* because it discriminated against owners of recently purchased property without any reasonable justification — not because the assessor’s policy lacked affirmative sanction in state law. The same policy does not gain in rationality just because it was adopted in another state through a different procedure. It follows that California’s welcome stranger policy deserves the same fate as Webster County’s. That West Virginia purported to follow “a current value assessment method” (but does not, at least in Webster County), while California law on its face requires the discriminatory policy, is without constitutional significance.

The court of appeal’s supposed distinction of *Allegheny* cannot be squared with this Court’s decisions

in *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362 (1940), and *Snowden v. Hughes*, 321 U.S. 1 (1944). In *Browning*, a state agency assessed railroad property at full market value, while locally elected assessors systematically assessed all other property "at far less than its true worth." 310 U.S., at 366. This appeared to conflict with the state constitutional requirement of equal taxation of all property in the state at full value. On an equal protection challenge brought by the railroad taxpayers, however, this Court upheld the discriminatory administrative practice:

[S]o far as the Federal Constitution is concerned, a state can put railroad property into one pigeon-hole and other property into another, . . . [Thus] the only question relevant for us is whether the state has done so. If the discrimination of which the Railway complains had been formally written into the statutes of Tennessee, challenge to its constitutionality would be frivolous.

Id. at 369. Since the Equal Protection Clause does not prohibit states from taxing railroads more heavily than other property (such an argument would be "frivolous"), the Court deemed it irrelevant whether such a discrimination was authorized under state law. For federal purposes, it could have been; and that is all that matters. By the same token, the Court's decision in *Allegheny* that taxation of newcomers at a higher rate than long-time property owners is unconstitutional was based solely on the irrationality of the discrimination and not on whether it was authorized under West Virginia state law.

Similarly, in *Snowden* a party made an equal protection challenge to an action of the State Primary

Canvassing Board that arguably violated state law. This Court held that the action did not violate the Equal Protection Clause, on the ground that a similar action, if required by the legislature, would have been constitutional. "[T]he action of the Board is . . . subject to constitutional infirmity to the same but no greater extent than if the action were taken by the state legislature. . . . Its illegality under the state statute can neither add to nor subtract from its constitutional validity." *Snowden*, 321 U.S., at 11.

Browning and *Snowden* definitively demonstrate that in determining whether a classification scheme comports with equal protection, the pertinent issue is not whether the state has legislatively created or sanctioned the classification. Instead, the sole inquiry is whether the discriminatory classification violates federal equal protection principles. If, as in *Browning* and *Snowden*, the administrators' classification scheme does *not* offend the Federal Equal Protection Clause, then it is constitutionally irrelevant that the state legislature or voters may have chosen to forbid such discrimination. Conversely, if as in *Allegheny* the classification scheme does violate the Equal Protection Clause, it is constitutionally irrelevant that a state legislature has sought to sanction such discrimination, as the voters have attempted to do in California in enacting Proposition 13.

The court of appeal's apparent conclusion — that an action by an administrative official that would be constitutional if authorized by state law becomes unconstitutional if not authorized by state law — would radically transform the relations between federal courts and state law. In *Stern v. Tarrant County Hosp. Dist.*, 778 F.2d 1052 (5th Cir.1985) (*en banc*), *cert. denied*, 476 U.S. 1108 (1986), an analogous case, the Fifth Circuit

rejected an argument that discrimination by a county hospital district against osteopaths violated the Equal Protection Clause, notwithstanding the fact that such discrimination was contrary to state statute. *Id.* at 1054-55. Judge Higginbotham, writing for an *en banc* court, reasoned:

When a legislature has a choice of means, each rationally related to its legislative purpose, it may constitutionally choose any of them. Its choice of one does not render the others irrational. It follows that acts violative of the chosen means, although by definition contrary to state law, are not *ipso facto* contrary to the fourteenth amendment. The constitutional test for rationality of a legislative classification, whether the classes be distinguished in the text of the law *or in its administration*, is whether *any* rational decisionmaker could have so classified.

Id. at 1056 (first emphasis supplied).

The *Stern* court rejected a contrary conclusion because it would inevitably transform every intentional violation of state law into a constitutional claim:

If state law defines who is entitled to what treatment or which means to a chosen goal are rational, then all intentional violations of state law by state agencies would violate the fourteenth amendment: if the action were taken against a class it would offend equal protection . . . and if taken against an individual it would offend due process. . . .

Stern, 778 F.2d, at 1059. See also *Hoffman v. City of Warwick*, 909 F.2d 608, 623 (1st Cir. 1990) ("the fact that withholding enhanced seniority to newly employed

veterans was, at that time, contrary to state law did not transform an otherwise rational distinction into a violation of the Equal Protection Clause"); *Archie v. City of Racine*, 847 F.2d 1211, 1217 (7th Cir. 1988) (*en banc*) ("A state ought to follow its law, but to treat a violation of state law as a violation of the Constitution is to make the federal government the enforcer of state law. State rather than federal courts are the appropriate institutions to enforce state rules."), *cert. denied*, 489 U.S. 1065 (1989).

The court of appeal's reasoning below would also impermissibly and unnecessarily interject courts into decisions about whether a state administrator's actions comport with state law or policy. This Court has long resisted such interference with a state's enforcement of its own laws. See, e.g., *Pennhurst State School & Hospital v. Halderman*, 465 U.S. 89, 106 (1984) ("it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law"); *DeShaney v. Winnebago County DSS*, 489 U.S. 189 (1989); *Paul v. Davis*, 424 U.S. 693, 698-99 (1976). See also C. F. Abernathy, *Section 1983 and Constitutional Torts*, 77 Geo. L.J. 1441, 1449-50 (1989) ("Creation of a federal tort law that might displace state law ha[s] been a constitutional taboo since at least the time of the *Slaughter-House Cases*")¹⁷

¹⁷Of course, individuals and groups who have been singled out for discriminatory treatment in violation of rights provided them by state law or policy, but where no independent federal constitutional right is implicated, are not without legal remedy. State law violations are appropriately remedied by state courts, acting within the power granted to them by state legislatures. To allow someone aggrieved by a state official who violates state law or policy to bring a constitutional challenge in federal court would render the states' capacity to tailor remedies to their unique circumstances meaningless.

The lower court's holding would allow a state to avoid the strictures of the Equal Protection Clause simply by voting to sanction an otherwise unconstitutional classification. The application of the Equal Protection Clause would vary from state to state depending upon the particularities of state law, so that railroads in Tennessee and osteopaths in Texas could sue to vindicate their rights to equal protection if state law required equal treatment of them, while railroads in Minnesota and osteopaths in New Mexico subject to laws that authorized differential treatment would have no similar constitutional claim.

No legitimate distinction can be drawn between the assessment policy struck down in *Allegheny* and that in this case. What was unconstitutional when instituted by the Webster County assessor is equally unconstitutional when instituted by the people of California. The lower court's attempt to evade the requirement set forth by this Court in *Allegheny* is without merit.

II.

NO "REASONABLE CONSIDERATION OF DIFFERENCE OR POLICY" UNDERLIES PROPOSITION 13'S GROSSLY DISCRIMINATORY IMPACTS.

Article XIII A cannot pass muster even under the most lenient standard of judicial review, because, as this Court determined in *Allegheny*, no rational basis justifies the welcome stranger method's arbitrary and discriminatory provisions. In *Allegheny*, the assessor and supporting *amici* unsuccessfully asserted that the Webster County welcome stranger system met the rational basis test, urging similar justifications to those relied on by the court of appeal below in upholding Proposition 13. This Court concluded, however, that

the system's discriminatory classifications and impacts did not rest on any "reasonable consideration of difference or policy." *Allegheny*, 488 U.S., at 343-45.

A. The Welcome Stranger Provision Arbitrarily Distributes Its Benefits and Burdens Without Regard to Actual "Ability to Pay."

The court below did not independently consider the justifications offered in support of Proposition 13, because it considered itself bound by the California Supreme Court's 1978 *Amador* decision upholding the measure. Pet. App. A17.¹⁸ Shortly after Proposition 13 was enacted, the *Amador* court hypothesized that Proposition 13's then-new and untried scheme "may operate on a fairer basis" than a current value system because

[an existing property owner's] future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control. [Conversely, a new buyer's higher assessments and taxes are] predicated on the owner's free and voluntary acts of purchase.

Amador, 22 Cal.3d, at 235, 583 P.2d, at 1293. As the intermediate court here paraphrased: "[Article XIII A]

¹⁸In *Amador*, the equal protection claim and its possible justifications were little more than an afterthought. The litigation was filed directly in the California Supreme Court on June 7, 1978, the day after Proposition 13 was enacted. See *Court Tests Looming for Proposition 13*, Los Angeles Times, June 8, 1978, Pt. 1, at 1. The decision was rendered just three and a half months later. The complaint was a sweeping facial challenge to Proposition 13 in its entirety on a variety of grounds, with the equal protection claim meriting only three-and-one-half pages of an appendix to petitioners' brief. See *Amador*, Petitioners' Memorandum of Points and Authorities, Appendix B, at 106-09.

protects taxpayers from being assessed on the appreciated but unrealized value of their real property." Pet. App. A26.¹⁹ Apparently by "fairness" in this context, the California courts suggest that Proposition 13's assessment provisions more closely approximate a taxpayer's ability to pay than do assessments under a current market value system.

Even a moment's reflection reveals the emptiness of this supposed justification. For all property owners, the ability to pay taxes varies enormously over time. What one person could afford at one time has nothing to do with what he or she can afford 10, 20 or 30 years later — or indeed what his or her children or grandchildren can afford 75, 100, or even 200 years later. Yet, Article XIII A freezes into perpetual legal effect a system that assumes that what a person (and successive generations) can afford to pay, year after year, in property taxes is forever dependent on what he or she was able to pay for a piece of property at a particular moment in the past. This is obviously a legal fiction of the highest order — a fiction to which no California court has given serious attention as a justification for Proposition 13, since actual disparities have developed and in light of *Allegheny*.

Furthermore, fully two thirds of the value of all taxable real property statewide is business, commercial,

¹⁹The Webster County assessor and supporting amici in *Allegheny* asserted similar justifications for their welcome stranger scheme. See *Allegheny*, Respondents' Brief, at 30, n.23; *Allegheny*, Brief for the National Ass'n of Counties et al. as Amicus Curiae in Support of Respondent, at 11.

industrial, and residential income (apartment) property.²⁰ Such sites are valuable because they generate rental income, or, if owner occupied, they save the business the expense of rent. The current market value of these business properties directly reflects their owners' ability to pay, while what these owners happened to pay to acquire them many years ago has no connection at all to their owners' current circumstances. Proposition 13's application to them is irrational and manifestly unfair.²¹

For residential property, Proposition 13 creates inequities that are perverse. Rather than being based on ability to pay, by its design Article XIII A systematically *ignores* that critical factor. Long-time owners of the most luxurious mansions in the wealthiest neighborhoods have become so advantaged by Article XIII A that they now pay lower taxes than recent buyers of humble bungalows in the poorest parts of Los Angeles County. This is shown vividly in the contrasting photographs of the two homes at p. 6 of this brief. Furthermore, the mortgage payments of long-time homeowners are typically much lower than those of new homebuyers, and make up a lower percentage of their income than what newcomers must devote to these payments. Indeed, long-time homeowners now typically

²⁰See 1990 Senate Office of Research Report, at 87-88 (showing the statewide share of new assessed value and property taxes paid by business properties holding at a steady 66.2% to 69% during the ten-year period between 1979 and 1989). See also 1991 Senate Commission Report, at 26, 36 (63% of Proposition 13's 1978 rollback of assessments to 1975-76 base years was comprised of business property).

²¹Business property owners directly compete with each other. Imposing vastly different property taxes on stores in comparable locations, for example, when those taxes have no connection to the value of the property, distorts the market, is unfair to the property owners and their tenants, and ultimately hurts customers. Marginal enterprises, carrying the property tax burden of others, are forced out of business, and competition is lessened.

own a great deal of equity in the properties they purchased years ago, whereas new buyers usually have relatively less equity in their homes. Yet long-time owners pay a mere fraction of the taxes paid by new homeowners based on a justification that often actually has an inverse relationship to ability to pay.

This is not to say that the pre-Proposition 13 system did not place a strain on some homeowners when rapid property appreciation outstripped inflation, causing taxes to outpace income. But Proposition 13 responded to this problem with an assessment system that distributes its benefits and burdens in a manner that has utterly no connection to who was harmed under the old system. The welcome stranger system showers benefits on both those able to pay and those not able to pay who simply had the good fortune to buy their homes before 1978. All of those early buyers are legislatively deemed less able to pay, and thus are taxed less, than all families buying homes of comparable value in more recent times, no matter how financially strapped any such recent homebuyers may be. Beyond establishing its 1% overall cap on taxes, any benefits Proposition 13 bestows on taxpayers not actually able to pay their taxes is purely coincidental.

If the ability-to-pay problems of fixed income taxpayers are the issue, there exist familiar methods used by most states to target relief. For example, the property tax forgiveness and tax deferral programs long available in California (and many other states) for seniors and others on fixed, low incomes could easily have been

expanded.²² Broad-based property tax limitation alternatives that provide relief equitably to all taxpayers are also readily available. For example, Los Angeles County in 1989 could have raised the same amount of revenue as Proposition 13 provided from residential property by assessing such property at current market value and lowering the overall rate from 1% to just .44%. J.A. 36-37, 72-73.²³ Given this easy availability of alternatives, "the choice of a proxy criterion . . . cannot be so casual as this, particularly when a more precise and direct classification is easily drawn." *Williams v. Vermont*, 472 U.S., at 24 n.8. But Proposition 13 has instead improperly swept all California real property into its welcome stranger scheme, imposing grossly disproportionate taxes and forcing massive tax shifts and subsidies from all newcomers to all long-time owners, whether they are actually able to pay or not.

²²California already has tax assistance programs for those taxpayers whose household income is less than \$20,000. See Cal. Rev. & Tax. Code § 20514 (West Supp. 1991). The State also allows all taxpayers who are at least 62 years old, blind or disabled and have household incomes of \$24,000 or less to postpone payment of their taxes until the property is sold. See Cal. Rev. & Tax. Code § 20585 (West Supp. 1991).

²³Because Los Angeles County homeowners with pre- and post-1978 base years are roughly divided fifty-fifty (J.A. 37), the median effective tax rate presently is approximately what homeowners with 1979 base years are paying. In practical terms, for a median priced home of about \$225,000, the taxes of a recent buyer would plunge from about \$2,250 to about \$990, 44% of the present tax, or a savings of about \$1,260 annually. The taxes of a 1975 base year owner of the same currently valued home would rise from \$450 to about \$990, an increase of \$540. J.A. 37. Notably, this adjustment is not much more than the approximately 38% real dollar tax cut that the 1975 base year owners of median-priced homes have received since 1978. J.A. 27.

B. That Proposition 13 May Permit a Taxpayer to Predict His or Her Property Taxes Does Not Justify the Imposition of a Discriminatory Tax System.

The intermediate court also suggested that Proposition 13's discriminatory provisions promote certainty and predictability: "[Proposition 13] allows each property owner to estimate future tax liability with substantial certainty, . . ." *Nordlinger*, Pet. App. A14, citing *Amador*, 22 Cal.3d, at 235, 583 P.2d, at 1293.²⁴

The quality of certainty in and of itself, however, does not make a tax system either rational or fair. Pursued without regard to other equitable factors, a "certain" tax system can be both discriminatory and unreasonable. For example, a system under which taxpayers whose street addresses have odd numbers were taxed a fixed amount five times that of taxpayers with even-numbered addresses would produce both complete certainty and total irrationality.

Moreover, even if predictability is a laudable goal, it in no way explains or justifies the *discrimination* Proposition 13 creates. The interest in certainty explains why the State might wish to adopt fixed valuations (as opposed to periodic revaluations), but it does not explain why everyone's value is not set as of the same year. Why should petitioner Nordlinger's fixed and certain level of taxes be five times the fixed and certain taxation level of her neighbors who live in nearly identical houses? This inherent discrimination among otherwise similar taxpayers is unaddressed by the predictability rationale.

²⁴This justification, too, was asserted in *Allegheny*, but apparently did not sway the Court. See *Allegheny*, Respondent's Brief, at 30, n.23; *Allegheny*, *Amicus Curiae* Brief of National Ass'n of Counties *et al.* in Support of Respondent, at 11.

Cf. Cleburne, 473 U.S., at 432 (State may have legitimate interest in preventing population congestion, but this does not in itself justify treating mentally handicapped group housing differently from other group housing).

C. No Rational Basis Underlies Proposition 13's Politically Expedient Attempt to Raise Revenue by Shifting the Overwhelming Burden of Property Tax Revenue Increases to Newcomers.

The intermediate court did not mention a third justification offered for Article XIII A, but the court of appeal in the *R.H. Macy* litigation, a similar case, did: "assurance of a stable source of revenue for the local governments." *R.H. Macy*, 226 Cal.App.3d, at 362, 276 Cal.Rptr., at 536. The Jarvis/Gann Committees' *amicus* briefs below explicitly articulated this final justification. Because existing owners wished to limit their future tax increases to only 2% annually, while continuing to enjoy a high level of public services without paying for them, Proposition 13's authors drafted it to provide that the great majority of all future increased levels of taxation would be paid by new buyers.²⁵

One has to admire their candor. This argument reveals the naked political calculation behind enactment of Proposition 13's welcome stranger provision in the 1978 election. In plain language, this justification can be restated: "Heaping higher taxes on as-yet-unidentified taxpayers is the only way to keep *our* taxes down and *our* services up." Fully two-thirds of those who voted in June 1978 were existing California homeowners. This self-interested group overwhelmingly voted in favor of

²⁵*Nordlinger v. Lynch*, Brief of Howard Jarvis Taxpayers Ass'n and Paul Gann Citizens Committee as *Amicus Curiae* in Support of Respondent, filed with the California Court of Appeal, at 6, 7-8, 39.

the proposition.²⁶ The same self-interest, of course, doubtless motivated the Webster County voters who repeatedly re-elected their assessor throughout more than 10 years of welcome stranger implementation in that West Virginia locality — as well as voters throughout America who vote for assessors using similar inequitable assessment schemes. But this is obviously not a legitimate basis for discrimination. “The objective of achieving political support by discriminatory means . . . is not one which the Constitution recognizes.” *Cole v. Housing Authority of the City of Newport*, 435 F.2d 807, 813 (1st Cir. 1970).

Not only does Proposition 13 sever the nexus between property taxes and ability to pay, but, according to the Jarvis/Gann explanation, it was purposely designed to eradicate any nexus between the benefits received from public services and the burden of paying for them, the other traditional rationale underlying property taxes.²⁷ Thus, the benefits of increased public services are shared by existing homeowners and new buyers, yet, in 1989, by Proposition 13’s design, post-1978 homebuyers in Los Angeles County (only one-half of the total) were forced to pay for fully 95% of the \$1.23 billion increase in property tax revenues over 1978 levels that paid for those services.

Distinctions between the taxes imposed on newcomers and long-time residents cannot be justified under the

²⁶Two-thirds of the voters who voted on June 6, 1978 owned their own homes. Existing homeowners who had no public employee in their households voted 81% in favor of Proposition 13. See *Inflation, Not Anger Against All Government*, Los Angeles Times, June 11, 1978, Pt. VI, at 1.

²⁷The long-standing benefit rationale for *ad valorem* taxation postulates that public services contribute to the value of property and therefore should be proportionately paid for by the owners according to value. R.A. Musgrave and P.B. Musgrave, *Public Finance in Theory and Practice* (2d ed. 1976), at 343-49.

rational basis test by the “simple desire to raise funds” (*Williams v. Vermont*, 472 U.S., at 25), especially where the demands on public services imposed by the two groups are similar. The Webster County assessor, too, unsuccessfully asserted that the need to raise revenue justified the welcome stranger system’s distinctions between long-time owners and new buyers.²⁸ Like the other justifications, the revenue raising rationale in no way explains why newcomers should shoulder this harshly disproportionate tax burden. Equal protection analysis must answer the question “[w]hat is the characteristic of the *disadvantaged class* that justifies the disparate treatment?” *Cleburne*, 473 U.S., at 453 (Stevens, J., and Burger, C.J., concurring) (emphasis supplied).

Proposition 13’s welcome stranger scheme imposes huge tax penalties on new buyers simply to raise revenue in a politically expedient manner. The other justifications merely camouflage this purpose. They provide no rationale whatsoever for the discriminatory aspects of Proposition 13, and thus fail to withstand an even minimal rational basis scrutiny.

III.

PROPOSITION 13 SHOULD BE SUBJECTED TO HEIGHTENED SCRUTINY BECAUSE IT DISTRIBUTES BENEFITS AND BURDENS BASED ON SENIORITY OF HOMEOWNERSHIP, THUS ERECTING A “BARRIER TO MOVEMENT” THAT VIOLATES THE RIGHT TO TRAVEL.

Discrimination against newcomers is treated with disfavor under the Equal Protection Clause, both

²⁸In *Allegheny*, the Webster County assessor argued that the welcome stranger classification’s “distinctions . . . are rationally related to the furtherance of the legitimate public purpose of obtaining tax revenues needed for county governments and school districts. . . .” *Allegheny*, Respondent’s Brief, at 29.

because it penalizes the constitutional right to travel and because it allows the politically dominant class of current residents to take advantage of politically under-represented groups. These factors, in turn, lead the Court to apply heightened scrutiny. Article XIII A raises both of these concerns.

California's effort to make property tax liabilities depend largely on seniority of property ownership — particularly when homeownership is involved — is closely analogous to the scheme struck down by this Court in *Zobel v. Williams*, 457 U.S. 55 (1982). There, Alaska distributed its excess oil revenue to each resident based on one dividend unit worth \$50 for each year of residency after 1959, the year Alaska became a state. The Alaska plan initially and continually favored long-time residents over newer residents, creating classes back to 1959 and another disfavored newcomer class every year. According to the Court, the distribution plan impermissibly created "fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State." *Id.* at 59. In an oft-cited passage, the Court stated:

If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a sliding scale based on years of residence — or even limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? *Could states impose different taxes based on length of residence?* Alaska's reasoning could open the door to state apportionment of other rights, benefits, and services according to length of residency. *It would permit the states*

to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible.

Id. at 63-64 (emphasis added).

The Court in *Zobel* determined that the Alaska scheme did not meet even minimal rational basis scrutiny. Significantly, however, five of the concurring Justices further concluded that heightened scrutiny was appropriate, because, in addition to its equal protection flaws, the scheme potentially burdened the federal constitutional right to travel.

Justice O'Connor emphasized the "continuous disability" the Alaska scheme placed on new residents:

Alaska forces nonresidents settling in the State to accept a status inferior to that of oldtimers. . . . In effect . . . , the State told its citizens: "Your status depends upon the date on which you established residence here. Those of you who migrated to the State cannot share its bounty on the same basis as those who were here before you". . . . Each group of citizens who migrated to Alaska in the past, or chooses to move there in the future, lives in the State on less favorable terms than those who arrived earlier.

Id. at 75.

Four of the Justices emphasized that, by allocating public benefits and burdens on the basis of seniority of residency, the Alaska scheme significantly interfered with our federal system, and therefore infringed the constitutional right to travel.

[I]f each State were free to reward its citizens incrementally for their years of residence, so that a citizen leaving one State would thereby

forfeit his accrued seniority, only to have to begin building such seniority again in his new State of residence, then the mobility so essential to the economic progress of our Nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive.

Id. at 68. In practical effect, such schemes establish an "aristocracy" with exclusive privileges, in direct contravention of the Constitution's equal protection premise that even the newest citizen should be on an equal legal footing with those "able to trace their lineage back for many generations within the State's borders." *Id.* at 69, 70 n.3.²⁹

The California welcome stranger tax assessment scheme shares many of these constitutional defects. It creates ever-increasing numbers of fixed, permanent and disfavored classes of otherwise indistinguishable citizens, based merely on the length of time they have owned property within the state. The Assessor candidly acknowledged this below when he stated:

All properties transferred on the same date are reassessed on that date. Hence, classification is made based on date of purchase — *each day a new class is created of the properties subject to reassessment because of transfer and completed new construction*. The properties within each class are treated equally, each is assessed at fair market value as of the date its class is formed.

²⁹See also *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 624 (1985) (statute's durational residency requirement impermissibly created "fixed, permanent distinctions . . . between . . . classes of concededly bona fide residents," by providing a \$2,000 annual property tax exemption to soldiers who served in the Vietnam War and who were state residents before a certain date); *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986) (statute that awarded a one-time civil service employment preference to veterans who were also state residents on a certain date violates right to travel).

Respondent's Brief at 10 (emphasis added). Proposition 13 thus runs afoul of the *Zobel* ruling that it is "clearly impermissible" for a state to divide its citizens into "expanding numbers of permanent classes," with each newcomer group being more disfavored than the last. *Zobel*, 457 U.S., at 64.

Moreover, Article XIII A, like the Alaska scheme, over time produces an aristocracy or privileged taxpaying caste of those who came to California and owned property relatively early and their descendants.³⁰ Those who migrate to the state later in time are permanently barred from sharing the taxpaying burdens on the same favorable terms as those who resided here and bought their homes and other property first. Indeed, all newly arriving homebuyers must heavily subsidize, for an indefinite and very lengthy period, the property taxes of California's long-established homeowners.

Proposition 13 also establishes huge tax advantages to long-time California homeowners so that, if they sell their homes in non-exempt transactions and relocate to a different home, county or state, they forfeit their accrued seniority. The harsh tax penalties imposed on non-exempt transfers of California real property already constitute a substantial deterrent to favored taxpayers

³⁰The 1991 Senate Commission Report strongly condemned the section 2(h) exemption for transfers from parent to child:

This exemption can be used repeatedly and indefinitely, forestalling a market reassessment forever. The inequity is clear. . . . Not only does [it] offend a policy of equal tax treatment for taxpayers in similar situations, it appears to favor the housing needs of children with homeowner-parents over children with non-homeowner-parents. . . . [T]his remarkable disparity of treatment perverts even the strongest arguments in behalf of the acquisition method of assessment. . . .

1991 Senate Commission Report, at 9-10.

with 1978 and earlier base years to sell their property and forfeit their preferred status. As disparities increase and the penalty on non-exempt transfers becomes more onerous, the incentive to retain low 1978 and earlier base years will be even higher than it is today.³¹

The only arguably significant difference between the instant case and *Zobel* is that California makes seniority of *property ownership*, rather than seniority of *residency*, the defining characteristic for how its property taxpaying benefits and burdens are allocated. The intermediate court distinguished *Zobel* solely on this ground. Pet. App. A24.

The court below, however, ignored the close relationship between homeownership and residency. Length of homeownership is a sufficiently close proxy to length of residency that the same constitutional concerns should apply. The term "travel" has historically been used by the Court to mean migration with the intent to "settle and abide." *E.g.*, *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 255 (1974). For most

³¹The exemptions from Article XIII A's reassessment provision clearly violate the constitutional right to travel, as they are available *only* to California residents and their children.

The section 2(a) exemption for transfers of their principal residence by owners over 55 who purchase a replacement residence is unavailable to persons over 55 who sell their out-of-state principal residences and move to California to buy new homes. Those non-California residents must pay property taxes assessed at the high current market value of the newly bought homes. In contrast, California residents who sell their principal residences and buy new homes will pay less taxes. Unlike the non-California residents, they will be able to transfer the lower assessments from their former homes to their new replacement residences.

Similarly, the section 2(h) exemption for transfers of principal residences from parents to children is also only available to California residents. A child of a non-California resident who owns a house in California can inherit it only in a non-exempt transaction and will pay vastly higher taxes. But the children of California residents can inherit their parents' principal residences, retain low base year tax assessments and pay low taxes thereafter.

Americans, to settle and abide involves a key part of the American dream, homeownership. Homeownership's close relationship to residency is demonstrated by the fact that, as with other states, the vast majority of California single family homes are occupied by their owners, while, conversely, except for vacation and second homes, very few non-Californians own California homes.³² Indeed, the only newcomers whose homes will ever receive Proposition 13's most favorable treatment are that tiny percentage who move to the state into a home they happen to have owned since 1975.

This Court has in the past looked at whether a criterion chosen by a state for classifying taxpayers is a close enough proxy for out-of-state residency to be subject to the same constitutional doctrines that involve residency. For example, in *Maricopa County*, 415 U.S. 250, the Court reviewed the validity of a one-year County residency requirement for non-emergency medical services in public hospitals. Notwithstanding that many of the effects on mobility were felt intra-state, as well as on out-of-state migrants, the Court determined that the County residency requirement was sufficiently close to a one-year State residency requirement that the constitutional right to travel analysis should apply. As in *Maricopa County*, the criterion used here (length of homeownership) to allocate benefits and burdens has both intra- and interstate impacts, but the constitutional

³²Over 74% of all single family residences in the Los Angeles metropolitan area are occupied by their owners. Renters occupy 22% of the residences. The final 4% are vacant either because they are for sale, for rent, or are for seasonal use. U.S. Department of Commerce, Bureau of the Census, and U.S. Department of Housing and Urban Development, *American Housing Survey for the Los Angeles-Long Beach Metropolitan Area in 1985*, at 1.

concerns involved implicate the fundamental workings of our federal system. *Cf. United Bldg. & Const. v. Mayor and Council of Camden*, 465 U.S. 208 (1984) (city ordinance giving preference for public jobs to city residents infringed Privileges and Immunities Clause rights of out-of-state residents, even though it also discriminated against in-state citizens).³³

Clearly, Proposition 13's onerous effects already "erect[] a real and purposeful barrier to movement, or the threat of such a barrier" (*Maricopa County*, 415 U.S., at 285 (Rehnquist J., dissenting)), and so infringe the right to travel. California recognized these barriers when it adopted Proposition 60, which established the section 2(a) exemption for persons over 55 who sell their homes and buy replacement homes. The ballot argument favoring the exemption explicitly recounted how older California homeowners face "huge property tax increases when they choose to sell their large family homes and move into new smaller residences" with the ensuing "property tax burden . . . now prevent[ing] many of them from finding affordable housing." Approving the exemption, the ballot argument maintained, would allow California's senior citizens "to improve their housing without being penalized by excessive taxation," thus

³³In *Williams v. Zobel*, 619 P.2d 422 (Alaska 1980), the Alaska Supreme Court, reviewing the issues not taken up by this Court in *Zobel v. Williams*, 457 U.S. 55 (1982), invalidated a scheme whereby persons who had previously paid income tax to the state over several years were given increasing levels of exemption until no taxes were due after three years of payments. The court ruled that income tax payments to the State were a sufficiently close proxy to state residency that, for all practical purposes, the scheme put the principal burden of taxation on new residents. The statute would have totally exempted about 80% of Alaska's existing taxpayers from the start, leading the court to conclude that the scheme placed "the principal burden of taxation" on new residents. *Id.*, 619 P.2d, at 424, n.4.

restoring their "freedom to live where they choose."³⁴ Unfortunately, Proposition 60 neglected to provide that freedom of mobility to all others wishing to buy or sell their homes in California.

Indeed, the severe burden Proposition 13 imposes on the constitutional right to travel is most starkly demonstrated by envisioning a federal union in which Article XIII A has been upheld, and the other 49 states decide to implement similar systems.³⁵ A citizen of one state who had accrued years of homeownership "seniority" would have to forfeit that seniority if he or she moved to another state to buy a home. The newly relocated resident would thereupon become a member of the new state's most disfavored class, indefinitely forced to subsidize the property taxes of privileged, longer-established homeowners in that State. This kind of unimaginable barrier to movement throughout the 50 States is precisely the danger that more widespread use of Proposition 13's welcome stranger scheme poses.

Finally, this Court has long applied heightened scrutiny in right to travel cases because of the relative political powerlessness of newcomers.

[N]on residents are not represented in the taxing State's legislative halls [so] judicial acquiescence in taxation schemes that burden

³⁴Proposition 60 Ballot Pamphlet, Arguments of Proponents, at 34-35 (November 1986).

³⁵See, e.g., *Williams v. Zobel*, 619 P.2d, at 429, where the Alaska Supreme Court observed:

If we were to accept the state's argument, boroughs and cities in Alaska could begin granting [tax] exemptions in such a way that only newcomers would pay the costs of local government. Other states might decide to impose income tax surcharges on their new residents. Such a system would create a patchwork of tax havens for long term residents. Each time someone moved, he or she would face the prospect of "buying in" to a new community. Such a concept is more than an imaginary threat to the right to travel, and we conclude that it also violates our own constitutional right to equal treatment.

them particularly would remit them to such redress as they could secure through their own State; . . . [The standard of review is thus] substantially more rigorous than that applied to state tax distinctions among, say, forms of business organizations or different trades and professions.

Austin v. New Hampshire, 420 U.S. 656, 662-63 (1975). Here, a very large, politically powerful group of 1978 property owners created a scheme under which they perpetually shifted the burden of projected tax increases onto future newcomers.³⁶ As a group, newcomers at any given moment constitute only a small fraction of the population, and are largely either unaware of their future status or are unable to protect themselves through political participation.³⁷ Furthermore, having successfully entrenched Article XIII A into the California Constitution, the self-interested 1978 majority has established a mandated scheme of discriminatory tax treatment that is virtually impossible to overturn. See *Nordlinger*, Pet. App. A27, n.11. Because the political system tilts so strongly against newcomers and new buyers alike, enforcement of their federal constitutional

³⁶Some Justices have noted that the need for strict scrutiny is lessened where a small minority is benefitted by a durational residency classification and the disfavored group is treated no differently from the rest of the population, *Soto-Lopez*, 476 U.S. 898 (O'Connor J., and Stevens J., dissenting), a situation certainly not present here.

³⁷Many commentators have suggested that initiatives should prompt more careful court scrutiny because their adoption circumvents many procedural safeguards that exist when legislation is enacted through the representative process. These safeguards work to protect minority interests through debate and compromise, the legislator's duties to represent all his or her constituents and to make informed decisions, and the executive branch check on legislative power. See generally J.N. Eule, *Judicial Review of Direct Democracy*, 99 Yale L.J. 1503 (1990); P. Gunn, *Initiatives and Referendums: Direct Democracy and Minority Interests*, 22 Urb. L. Ann. 135 (1981); Comment, *Judicial Review of Laws Enacted by Popular Vote*, 55 Wash. L. Rev. 175 (1979).

rights in the federal courts is their only realistic hope for relief.

The justifications asserted to support Article XIII A's welcome stranger system do not meet even minimal rational basis scrutiny. *A fortiori*, this scheme cannot pass a heightened level of scrutiny, and it violates the constitutional right to travel.

IV.

THE CALIFORNIA COURTS ARE THE APPROPRIATE FORUM TO CONSIDER RELIEF IN THE FIRST INSTANCE.

The issue before the Court is whether petitioner Nordlinger has stated a claim upon which relief can be granted, here in the context of a traditional state law demurrer, as modified by the intermediate court's judicial notice ruling. The question of what relief should be granted to remedy any constitutional defects in Article XIII A's welcome stranger system is not presently pending before this Court. When this Court rules that a state tax is unconstitutional, its practice is "to abstain from deciding the remedial effects of such a holding," and instead to entrust state courts with the "initial duty of determining appropriate relief," as a matter of federal-state comity. *American Trucking Ass'ns Inc. v. Smith*, ___ U.S. ___, 110 S.Ct. 2323, 2325, 2330 (1990) (collecting cases).

The California Legislature has already started a comprehensive evaluation of ways to restore equity to its property tax assessment system, in the event this Court holds that Article XIII A is unconstitutional. Blue ribbon citizen panels and expert studies have recommended a variety of alternatives focusing principally on so-called "revenue neutral" solutions. See, e.g., 1991 Senate Commission Report, *passim*; 1990 Senate Office of Research Report, at 78. By reassessing all residential property up to current market value and then reducing

the tax rate, these revenue neutral systems would raise only the same amount of property tax revenue that is presently obtained under Article XIII A.

The Legislature is also studying various tax exemption and deferral proposals designed to target special relief to any early base year taxpayer who would experience difficulty with any equity-dictated increases. *See* 1991 Senate Commission Report, at 4-7, 23; 1990 Senate Office of Research Report, at 68. More technically, the legislature is also reviewing issues such as retroactivity, statutes of limitation, and escape assessments, so as to approach the normal remedial issues in an orderly way. *See e.g.*, Assembly Office of Research, *Legal Challenges to Proposition 13: Implications for California* (October 1991).

This Court should therefore hold unconstitutional Article XIII A's welcome stranger system, and then remand to the state courts the issues relating to determining appropriate relief.

CONCLUSION

The lower court decision should be reversed. This Court has already put to rest any notion that welcome stranger schemes embody any rational policy, yet their political irresistibility remains undeniable. The lower court's reasoning would allow states to override the fundamental principles of fairness and equity contained in the Equal Protection Clause simply by embedding an otherwise unconstitutional discriminatory system into its laws. Such a result cannot be countenanced.

Respectfully submitted,

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APPENDIX

TABLE 1

**RESIDENTIAL PROPERTY TAX DISPARITIES
THROUGHOUT LOS ANGELES COUNTY**

**CURRENT ASSESSMENTS OF COMPARABLE PRO-
PERTIES 1989 PURCHASERS: PRE-1975 PURCHASERS¹**

NEIGHBOR- HOOD	ASSESS- MENTS	NEIGHBOR- HOOD	ASSESS- MENTS
SANTA MONICA (Ocean Park)	17:1	PALMS	10:1
VENICE (Walk Streets)	13:1	SILVERLAKE	10:1
BEL AIR	13:1	SANTA CLARITA	10:1
SHERMAN OAKS	12:1	LOS ANGELES (Mid-City)	10:1
CERRITOS	12:1	GRANADA	
ARCADIA	12:1	HILLS	10:1
WESTWOOD	12:1	BOYLE HEIGHTS	10:1
PACIFIC PALISADES	12:1	POMONA	10:1
BEVERLY HILLS	12:1	SUNLAND	10:1
W. LOS ANGELES (Rancho Park)	12:1	EAGLE ROCK	10:1
BRENTWOOD	11:1	MONROVIA	9:1
HOLMBY HILLS	11:1	GLEN DORA	9:1
GLENDALE	11:1	HANCOCK PARK	9:1
EL MONTE	11:1	LOS ANGELES (Coliseum Area)	9:1
SOUTH GATE	11:1	MAR VISTA	9:1
SAN GABRIEL	11:1	HYDE PARK	9:1
GRIFFITH PARK	11:1	PARK LA BREA	9:1
PASADENA	11:1	ALHAMBRA	9:1
PALOS VERDES	10:1	WEST HILLS	9:1
LONG BEACH	10:1	LINCOLN PARK	9:1
ENCINO	10:1		
SAN PEDRO	10:1		

¹These ratios were determined based on a computer analysis of every property sold in Los Angeles County in the month of August 1989. For every sale, economist David Gold calculated the disparity between the new owner's assessment and the prior owner's assessment for the very same property, by comparing the sales price (the new owner's assessment) to the assessment immediately before the sale (the prior owner's assessment).

Source: J.A. 66, 78.

Appendix

TABLE 2

**DIFFERENCE IN PROPERTY TAXES BETWEEN
COMPARABLE HOMES IN SELECTED
NEIGHBORHOODS**

NEIGHBOR- HOOD ¹	CURRENT MARKET VALUE OF HOME	TAX ON NEW OWNER	TAX ON PRE- 1975 OWNER ²	RATIO OF TAX ON NEW OWNER TO TAX ON PRE-1975 OWNER
BEVERLY HILLS	\$3,800,000	\$38,000	\$3,230	12:1
MANHATTAN BEACH	630,000	6,300	680	9:1
BALDWIN HILLS (Petitioner's Area)	210,000	2,100	360	6:1
COMPTON	90,000	900	180	5:1
WATTS	80,000	800	160	5:1

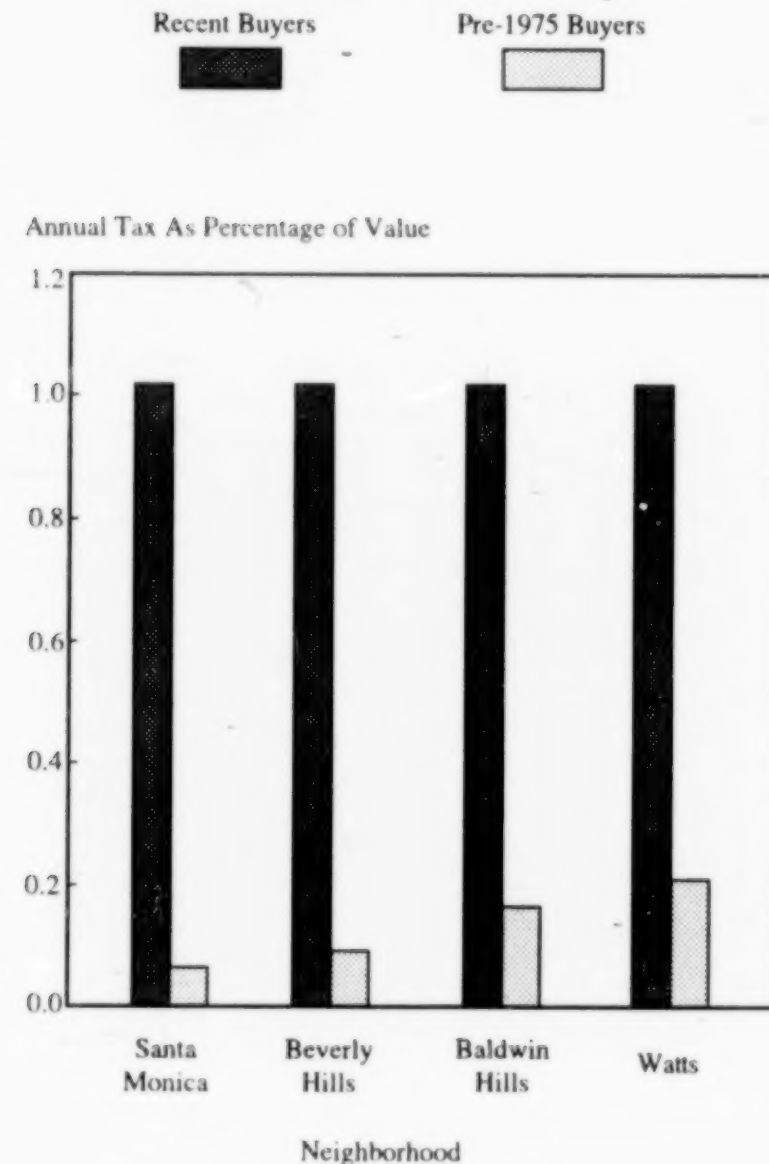
¹Each neighborhood entry corresponds to an actual pair of homes displaying tax disparities between recent and long-time owners that are typical in their neighborhood for this class of home. In each instance, the home owned by a pre-1975 buyer was judged by a professional appraiser to be comparable with or superior to the corresponding recently purchased home. See J.A. 20-23.

²The taxes are calculated at the 1% rate; because rates to pay for voter approved indebtedness vary around the county, actual taxes may be slightly above 1%.

Source: J.A. 24.

FIGURE 1

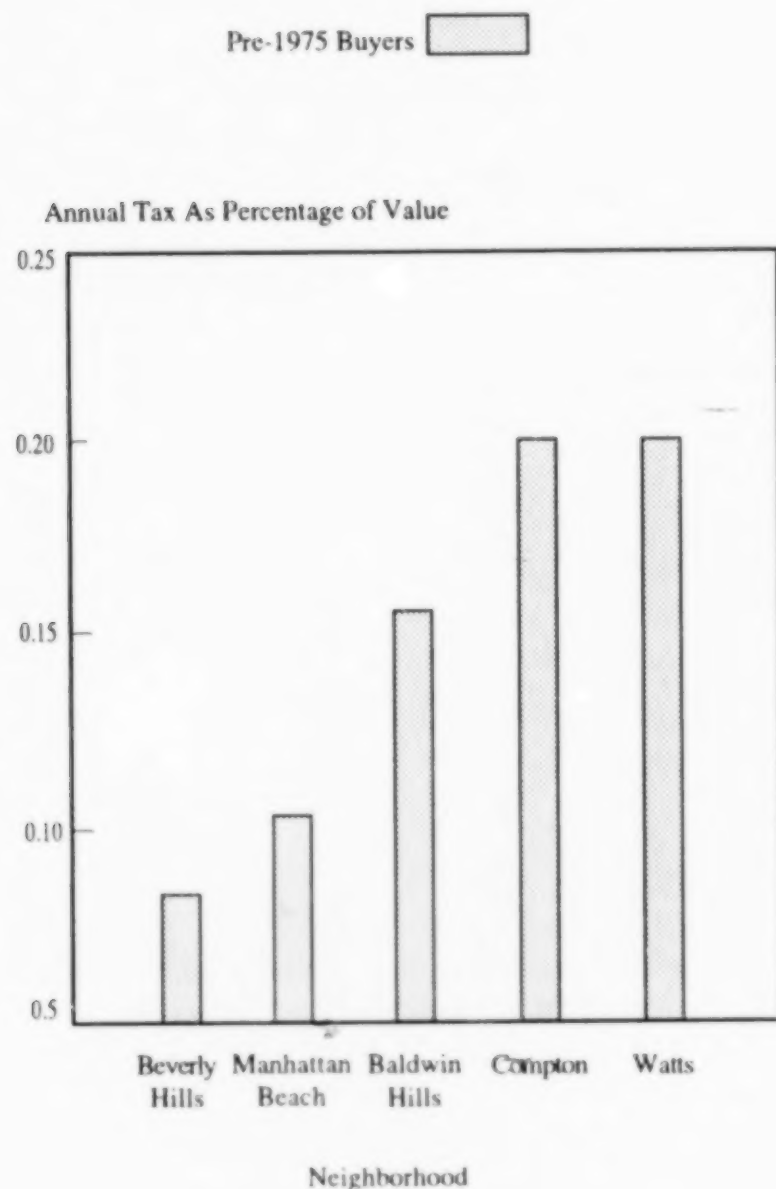
**PROPORTION OF PROPERTY VALUE PAID IN TAX
RECENT BUYERS COMPARED TO PRE-1975 BUYERS**



(Based on Tables 1 & 2)

FIGURE 2

**PROPORTION OF PROPERTY VALUE PAID IN TAX
PRE-1975 BUYERS**



(Based on Table 2)

TABLE 3

**RATE AT WHICH TAX DIFFERENTIALS HAVE
GROWN SINCE THE ARTICLE XIII A BASELINE
YEAR, AND PROJECTED DIFFERENTIALS IN 10
MORE YEARS IN SELECTED NEIGHBORHOODS**

	Annual ¹ Growth Rate of Home Values	Annual ² Growth Rate of Tax Differ- entials	Current Tax Differ- entials	Years Taken For Tax Differ- entials to Double	Projected Tax Differ- entials 10 Years From Now
VENICE	22.5%	20.1%	13:1	3.8	81:1
BEVERLY HILLS	21.1%	19.4%	12:1	3.9	71:1
MAR VISTA	18.3%	16.0%	8:1	4.7	35:1
BALDWIN HILLS (Petitioner's Area)	16.0%	13.7%	6:1	5.4	22:1
WATTS	14.4%	12.2%	5:1	6.0	16:1

¹This column is based on the average rate at which home values have grown in each neighborhood since 1975.

²The growth rate of the tax differentials differs from the growth rate of the values of the properties because of the 2% annual adjustment allowed under Article XIII A.

Source: J.A. 25, 26.

TABLE 4
DISPARITIES IN TAXES PAID BY LONG-TIME
AND RECENT OWNERS OF COMPARABLE
VACANT LOTS IN LOS ANGELES COUNTY¹

LOCATION	ANNUAL TAX ON LONG- TIME OWNER ²	ANNUAL TAX ON NEW OWNER	PROPERTY TAX ASSESSMENTS BASED ON 1989 PURCHASE PRICE: PROPERTY TAX ASSESSMENTS BASED ON 1975-76 VALUES
PACIFIC			
PALISADES	\$ 6.00	\$3,500.00	583:1
PACIFIC			
PALISADES	10.00	2,600.00	252:1
BEVERLY GLEN			
CANYON/LA	4.60	500.00	108:1
LAUREL			
CANYON/LA	38.00	3,500.00	93:1
MALIBU	59.00	5,000.00	85:1
BEL AIR	66.00	3,450.00	53:1
LAUREL			
CANYON/LA	15.00	750.00	48:1
BEVERLY HILLS	51.00	2,400.00	47:1
BEVERLY HILLS	88.00	3,600.00	41:1
LAUREL			
CANYON/LA	46.00	1,300.00	28:1
LAUREL			
CANYON/LA	112.00	3,000.00	27:1

¹Dollar figures have been rounded.

²Many vacant lots in Los Angeles County are presently taxed as little as \$6.00 because in 1975, the year of their base year value, they were considered undevelopable. Today, by contrast, due to technological or legal changes, the lots are worth hundreds of thousands of dollars, an increase in valuation not subject to property taxation until the property changes ownership. See *Nordlinger*, Joint Appendix in Cal. Ct. App., Vol. III, at 594, 595.

Source: J.A. 68, 80-82.

TABLE 5

DISPARITIES IN TAXES PAID BY LONG-TIME AND
RECENT OWNERS OF COMPARABLE COMMERCIAL,
INDUSTRIAL AND INCOME-PRODUCING PROPERTY
IN LOS ANGELES COUNTY

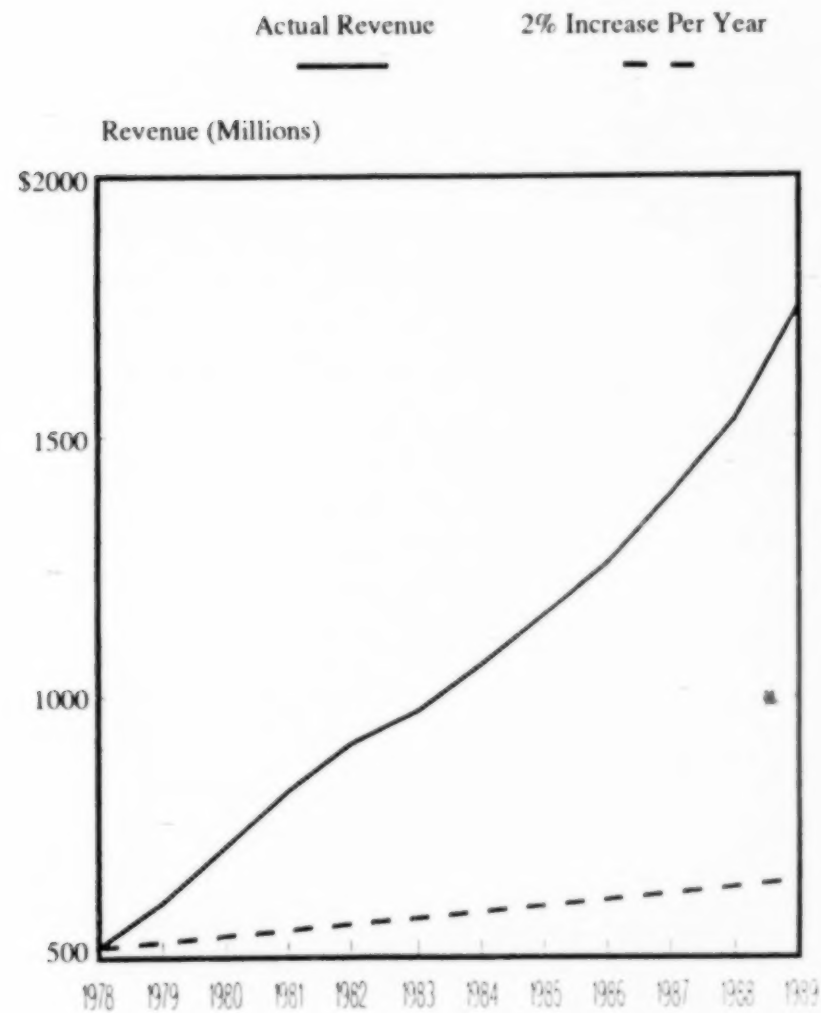
APARTMENTS		OFFICE BUILDINGS	
NEIGHBORHOOD	RATIO ¹	NEIGHBORHOOD	RATIO
BRENTWOOD	10:1	MONROVIA	8:1
WEST HOLLYWOOD	9:1	SAN PEDRO	8:1
HUNTINGTON PARK	9:1	L.A. MID-CITY	7:1
ARCADIA	9:1	AREA	
SOUTH GATE	9:1	COMMERCE	7:1
		COMPTON	7:1
LIGHT INDUSTRIAL		GARAGES	
NEIGHBORHOOD	RATIO	NEIGHBORHOOD	RATIO
FLORENCE	11:1	COMPTON	10:1
PALMDALE	10:1	SOUTH LOS ANGELES	8:1
WATTS	9:1	UNIVERSAL CITY	6:1
EL MONTE	8:1	GLENDALE	6:1
VAN NUYS	7:1	DOWNTOWN	6:1
		LOS ANGELES	
STORE BUILDINGS		RESTAURANTS	
NEIGHBORHOOD	RATIO	NEIGHBORHOOD	RATIO
CULVER CITY	11:1	UNIVERSAL CITY	9:1
DOWNTOWN LA	10:1	INGLEWOOD	8:1
SOUTH GATE	9:1	TEMPLE CITY	6:1
GLENDALE	8:1	STUDIO CITY	6:1
LONG BEACH	7:1	WHITTIER	6:1

¹The ratio is equal to property tax assessments on property purchased in 1989 compared to tax assessments on comparable properties purchased in 1975.

Source: J.A. 68-70, 82-85.

FIGURE 3

**ACTUAL PROPERTY TAX REVENUE
FROM LOS ANGELES COUNTY HOMEOWNERS
COMPARED TO 2% INCREASES PER YEAR**



Source: Los Angeles County Assessor's 1989 Roll Release, J.A. 45. (See Table 6.)

TABLE 6

**ACTUAL REVENUE UNDER PROPOSITION 13
COMPARED TO 2% ANNUAL INCREASE¹**

**Los Angeles County Single Family
Residential Property Tax
(in million of dollars)**

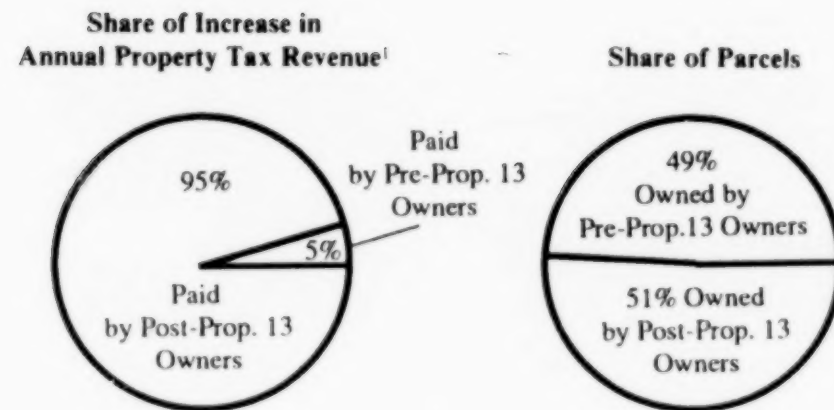
	Actual Revenue	2% Increase Per Year
1978	\$ 520 ²	\$ 520
1979	604	530
1980	712	541
1981	820	552
1982	908	563
1983	972	574
1984	1,059	586
1985	1,157	597
1986	1,255	609
1987	1,388	621
1988	1,532	634
1989	1,751	647

Increase in Annual Revenue 1978-1989:	\$ 1,231	\$127
--	----------	-------

¹This Table and Figure 3 compare Los Angeles County's annual residential property tax revenue increase under Article XIII A to the much smaller increase that would have occurred if all residential assessment increases had been limited by the 2% per year cap. Actual 1989 revenue was \$1.23 billion higher than 1978 revenue under Proposition 13. The increase that would have occurred under application of the 2% per year cap to all single family homes would have been only \$127 million.

²The 1978 revenue figure represents the revenue resulting from the application of the 1% tax rate to the assessment base as readjusted by the Los Angeles County Assessor pursuant to Proposition 13. Source: Los Angeles County Assessor's 1989 Roll Release, J.A. 45.

FIGURE 4
SINGLE FAMILY RESIDENCES
LOS ANGELES COUNTY - 1989



¹As Table 6 and Figure 3 show, Los Angeles County single family residential property tax revenues were \$1.23 billion higher in 1989 than in 1978, when Proposition 13 passed. As Table 6 and Figure 3 also show, the total tax revenues raised in 1989 would have been only \$127 million higher than 1978 revenues, had Proposition 13 limited assessment increases on all properties to 2%, without the change in ownership and new construction provisions.

As of 1989, owners who retained their property since 1978, and hence experienced only the 2% annual increase in their assessments, owned about 49% of residential parcels. J.A. 37. Their contribution to the \$1.23 billion increase Los Angeles County homeowners paid in 1989 was 49% of \$127 million, or \$62 million. That was 5% of the \$1.23 billion. The other half of homeowners (51%) who purchased their properties since 1978 paid the remaining \$1.189 billion, which was 95% of the increase.

Source: J.A. 37, 45. See Table 6, Figure 3.

PROOF OF SERVICE BY MAIL

State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on December 23, 1991, I served the within *Petitioner's Brief on the Merits* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Clerk, United States
 Supreme Court
 One First Street, N.E.
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I declare under penalty of perjury that the foregoing is true and correct. Executed on December 23, 1991, at Los Angeles, California.

Peter Sandanavicius
 (Original signed)

FOR ARGUMENT

19
No. 90-1912

Supreme Court, U.S.
FILED

JAN 31 1992

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

STEPHANIE NORDLINGER,
Petitioner,

v.

KENNETH HAHN, in his capacity as
Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,
Respondents.

On Writ of Certiorari to the
Court of Appeal of the State of California

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January 31, 1992

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QUESTIONS PRESENTED

1. Whether California's tax on the acquisition value of property violates the Equal Protection Clause.
2. Whether, if petitioner has standing to assert such a claim, the California tax on the acquisition value of property infringes the constitutionally protected right of interstate travel.

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STATEMENT OF THE CASE

1. *Background.* Prior to 1978, California's state and local taxes were among the highest in the nation.¹ Because real property was taxed based upon market value, sustained growth in the California real estate market

¹ Oakland, *Proposition 13—Genesis and Consequences*, 32 Nat'l Tax J. 387, 388-89, 390 (Supp. June 1979) (in 1975-1976, state and local taxes consumed 14.9 percent of Californians' personal income, placing the State's per capita tax burden 19 percent above the national average).

during the 1960s and 1970s fueled a sharp rise in property taxes. From fiscal year 1967-1968 through 1971-1972, property tax revenues increased, on average, 11.5 percent annually; about half of this increase was caused by the rise in the assessed value of property. Report of the California Senate Comm'n on Property Tax Equity and Revenue 23 (June 1991) ("Senate Report"). Moreover, because the prices of single-family homes were growing even faster than other properties, homeowners were shouldering an increasing share of the growing property tax burden. Oakland, *supra* note 1, at 389.

The California legislature responded by enacting a series of measures aimed at relieving this burden. In 1968, the State adopted a homeowner tax exemption for the first \$3000 of market value; the exemption later was increased to \$7000. Senate Report, *supra*, at 23. In 1972, the State capped local property tax rates and, in separate measures, extended relief to low-income senior citizens and to renters. *Id.* In all, during the 10 years preceding enactment of Proposition 13, the legislature passed 19 property tax relief measures. DeCanio, *Proposition 13 and the Failure of Economic Politics*, 32 Nat'l Tax J. 55, 55 (Supp. June 1979). Despite these efforts, the property tax burden continued to grow as real estate prices skyrocketed. Statewide, the median price for an existing home doubled from 1973 to 1977, far outpacing general inflation. Senate Report, *supra*, at 23 (median price rose from \$31,530 in 1973 to \$62,430 in 1977); Oakland, *supra* note 1, at 390. As a result, "a large number of homeowners found themselves with property tax bills which were doubling and even tripling without a corresponding increase in their income flow."² These huge

² Oakland, *supra* note 1, at 392; see also Senate Report, *supra*, at 25 (noting that some "homeowners . . . received tax bills double or even triple the previous year's"). At the same time, the "virtual explosion of tax revenues" was creating enormous budget surpluses. Oakland, *supra* note 1, at 393. In the two-year period preceding the

increases in the assessed market value of real property literally taxed some people out of their homes. See Oates, *Capitalization Session: Discussion*, 32 Nat'l Tax J. 111, 111 (Supp. June 1979).

Of course, these burdens fell most heavily on individuals with fixed incomes, many of whom were elderly. Aside from losing their homes, the fear of that prospect naturally caused substantial emotional harm, and the money used to pay taxes to keep a roof over their heads necessarily was diverted from necessities such as food, clothing, and health care. In short, the increasing taxes based on market value assessments posed serious threats to the health and welfare of residents of California.

2. *Proposition 13.* In response to these economic and social circumstances, and to the failure of piecemeal tax relief efforts, California voters in June 1978 overwhelmingly approved a statewide ballot initiative known as Proposition 13, which dramatically restructured the State's system of property taxation. Proposition 13 amended the California Constitution to add Article XIII A which placed a cap on property tax rates and generally required property to be assessed according to its value at acquisition rather than its current market value. See Cal. Const. art. XIII A, §§ 1(a), (2)(a) (Deering 1981 & Supp. 1992).

Article XIII A of the California Constitution consists of four essential and interrelated elements. First, Section 1 caps real property taxes at one percent of property "value"—a cut in the tax rate of more than 50 percent.³ Second, Section 2(a) defines the "value" of property, for purposes of taxation, as the 1975 assessed value or, for properties acquired after that date, as "the appraised

enactment of Proposition 13, the State's revenues swelled by 40 percent—without any increase in tax rates. *Id.* It was projected that the State's budget surplus would top \$10 billion the following year. *Id.* at 392.

³ Senate Report, *supra*, at 31; Oakland, *supra*, note 1, at 387.

value of the property when purchased [or] newly constructed.”⁴ Third, Section 2(b) allows the assessed acquisition value of property to be adjusted upward for inflation, but by no more than two percent annually.⁵ Finally, Sections 3 and 4 prohibit the state and local governments from enacting new ad valorem property taxes and impose a super-majority vote requirement on increases in certain other state and local taxes.⁶ As the California Supreme Court has recognized, each of these four essential elements is “interrelated and interdependent, forming an interlocking ‘package’ . . . to assure effective real property tax relief.” *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 583 P.2d 1281, 1290 (Cal. 1978). Petitioner’s argument in this Court challenges only the “acquisition value” provisions of Section 2, which are at the heart of Article XIII A. See Pet. Br. 2 n.1.

Article XIII A worked a fundamental change in California’s property tax system, shifting the valuation of property subject to taxation from a “current value” basis to an “acquisition value” basis. This restructuring was a response to the unique economic and public welfare conditions prevailing in California and was tailored to provide relief to those taxpayers who were suffering most under

⁴ Article XIII A has been amended to exempt from reassessment certain types of new construction, see Cal. Const. art. XIII A, §§ 2(a), 2(c) (Deering 1981 & Supp. 1992), and certain transfers of property between members of an immediate family, see *id.*, §§ 2(g), 2(h). In addition, the law permits citizens over age 55 to carry their existing assessments with them when they sell their homes and relocate to replacement quarters of equal or lesser value. See *id.*, § 2(a).

⁵ The same section has been amended to permit assessments to be lowered if property values fall below assessed value, although the likelihood of this happening is low for properties that have not recently changed hands.

⁶ Section 6 provides for severability of the various provisions of Article XIII A.

the State’s market value tax system.⁷ Most important, Article XIII A eliminated the prospect of homeowners being taxed into financial distress and even forced out of their homes because of uncontrollable and unpredictable swings in the California real estate market. Under Article XIII A, prospective purchasers of property could calculate their tax obligations at the time of purchase with the assurance that their tax bills would not increase by more than two percent each year.

3. *Amador Valley*. Shortly after Article XIII A was enacted in 1978, a group of California taxpayers and governmental agencies brought suit challenging Article XIII A’s constitutionality under six separate provisions of the federal and state constitutions. In particular, the taxpayers—like petitioner here—argued that Article XIII A violated the Equal Protection Clause of the Fourteenth Amendment and the right to travel. The California Supreme Court rejected the taxpayers’ claims in *Amador Valley Joint Union High School District v. State Board of Equalization*, 583 P.2d 1281 (Cal. 1978).

With respect to the equal protection challenge, the *Amador Valley* court began by acknowledging that, under the acquisition value provisions of Article XIII A, “two substantially identical homes, located ‘side-by-side’ and receiving identical governmental services, could be assessed and taxed at different levels depending upon their date of acquisition.” *Id.* at 1292. The court went on, however, to observe that the existence of such disparities does not contravene the Equal Protection Clause so long as the State’s method of taxation is rationally related to a legitimate governmental objective. See *id.* at 1292-93.

According to the California Supreme Court, Article XIII A embodied an alternative, and fundamentally dif-

⁷ As one commentator noted, “Proposition 13 emerges as a unique California phenomenon. The combination of factors which gave it birth are unlikely to be matched in any other State.” Oakland, *supra* note 1, at 405.

ferent, philosophy of taxation from that of the pre-existing current value system. Abandoning a policy that tied property taxes to the prevailing values in California's volatile real estate market, Article XIII A embraced a new tax policy under which "henceforth all real property w[ould] be assessed and taxed at its value *at date of acquisition*." *Id.* at 1293 (emphasis in original). The court found that

[t]his "acquisition value" approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should *bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value*. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach [by largely eliminating taxation on unrealized gains in value].

Id. (emphasis added). "Seen in this light," Article XIII A "does not unduly discriminate against persons who acquired their property after 1975, for those persons are assessed and taxed in precisely the same manner as those who purchased property in 1975, namely, on an acquisition value basis predicated on the owner's free and voluntary acts of purchase." *Id.* The court concluded that there was no constitutional impediment to the adoption of such an acquisition value system because the Equal Protection Clause "do[es] not purport to confine the states to a current value system" of property taxation. *Id.*

The *Amador Valley* court also rejected the taxpayers' claim that Article XIII A violated the constitutional right to travel. The court found that "[t]he change from a current value system to an acquisition value method is intended to benefit *all* property owners, past and future, resident and nonresident, by reducing inflationary increases in assessments, by limiting tax rates, and by permitting the taxpayer to make more careful and accurate

predictions of future tax liability." *Id.* at 1295 (emphasis in original). Article XIII A, the court reasoned, was therefore more likely to serve as an inducement than as a barrier to prospective migrants from other states. *Id.*

4. *Proceedings in this Case*. Stephanie Nordlinger is a California resident who purchased her first home in the Baldwin Hills area of Los Angeles County on November 1, 1988. Pet. App. A4. Petitioner paid \$170,000 for the property—\$48,500 more than the sellers had paid for the same house just two years earlier and five times as much as some of her neighbors paid for their homes roughly a dozen years before. J.A. 6, 9-10. Within a year of her purchase, petitioner brought suit against respondents, Los Angeles County and its assessor, in the Superior Court of Los Angeles County, alleging that she had been overtaxed on her property in violation of the United States Constitution. In her first amended complaint, filed October 25, 1989, she sought a declaration that the acquisition value tax was unconstitutional and, in a separate count, a refund of \$896 for property taxes paid during the 1988-1989 tax year. *Id.* at 12-13.

Respondents demurred to petitioner's complaint on the grounds that the constitutionality of the tax had been settled by the California Supreme Court in *Amador Valley* and that her claim for declaratory relief was, in any event, time-barred.⁸ Petitioner objected to the respond-

⁸ J.A. 14-15. Petitioner sought declaratory relief pursuant to section 4808 of the California Revenue and Taxation Code, which grants a cause of action to taxpayers who allege that a change of law has rendered local assessment or collection of taxes illegal or unconstitutional. Section 4808 requires, however, that the taxpayer bring her action within 12 months of the controlling change in law. See Pet. App. A5 n.3. In this case, petitioner contended that the relevant "change . . . in law" was this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989), which preceded petitioner's complaint by nine months; the trial court, however, found that the first count of petitioner's complaint (based upon section 4808) was time-barred because it was filed 11 years after Article XIII A changed the tax law of California. See Pet. App. D2.

ent's demurrer and sought leave to "amend her complaint to include allegations based on further updated and extensive studies of property tax inequities in Los Angeles County." Pet. App. A7. The trial court held that the decision in *Amador Valley* was controlling and sustained the demurrer without leave to amend. *Id.* at D1-D2.

On review, the California Court of Appeal affirmed the trial court's judgment. *Id.* at A1-A27. The trial court's denial of petitioner's motion to amend her complaint meant that the studies she had prepared and tendered in support of her amended complaint were not part of the record in this case. Nevertheless, the court of appeal took judicial notice of the fact that the acquisition value tax "has resulted in gross disparities in the assessments of properties with similar current market values." *Id.* at A12. According to the court of appeal, however, the existence of such disparities did not justify reconsidering *Amador Valley* because "[t]hat decision [had] plainly anticipated" that property tax assessments under an acquisition value system would result in discrepancies when measured against current market value. *Id.* at A16.

The court of appeal also held that this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989), which struck down a county assessor's arbitrary assessment practices as a violation of the Equal Protection Clause, did not call into question the California Supreme Court's earlier judgment in *Amador Valley*. Pet. App. A20-A21. The court reasoned that *Allegheny Pittsburgh* stands only for the common-sense proposition that it is irrational in a tax system founded upon current market value to assess like-valued properties differently depending upon their date of acquisition. *Id.* "Because California law provides for an acquisition value assessment method," the court reasoned, "Nordlinger's reliance on *Allegheny's* striking down of an arbitrarily enforced current market value method is misplaced." *Id.* at A21.

The court of appeal also rejected petitioner's claim that California's acquisition value tax violated the right to travel. *Id.* at A23-A25. The court held that petitioner's reliance upon cases invalidating laws apportioning state benefits according to length of residency "overlook[ed] the crucial fact that article XIII A's acquisition value assessment scheme applies equally to nonresident owners." *Id.* at A25 (emphasis omitted). Because Article XIII A "bases each property owner's assessment on acquisition value, irrespective of the owner's status as a California resident or the owner's length of residence in the state," the court concluded, Article XIII A does not infringe the right of interstate migration. *Id.*

Thus, the court of appeal affirmed the trial court's judgment in all respects. On February 28, 1991, the California Supreme Court denied petitioner's petition for discretionary review. *Id.* at B1.

SUMMARY OF ARGUMENT

I. California has exercised its "very wide discretion in the laying of [its] taxes," *Allied Stores, Inc. v. Bowers*, 358 U.S. 522, 526 (1959), by choosing to replace its tax on the current market value of property with a tax based on the acquisition value of property. Applying equal protection principles that have "weathered nearly a century of Supreme Court adjudication," *Kahn v. Shevin*, 416 U.S. 351, 355-56 (1974), California's sovereign choice to adopt this method of taxation must be upheld so long as it "bear[s] some rational relationship to legitimate state purposes." *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 40 (1973). Under this standard, the California tax plainly is constitutional.

The courts of California have identified three separate purposes underlying the State's choice of an acquisition value method of taxation, each of which is legitimate and rationally served by the California tax, and each of which independently provides a sufficient basis to uphold the

tax. First, an acquisition value tax avoids taxing unrealized appreciation in the value of property, thereby eliminating the prospect of homeowners being taxed out of their homes or into a state of poverty because of dramatic increases in property values. See *infra* pp. 17-21. Second, an acquisition value tax provides taxpayers with the ability to calculate their future tax liability with virtual certainty based on what they were willing to pay for their property—rather than having their future tax liability based upon a “market value” that reflects third-party transactions over which they have no control. See *infra* pp. 21-24. Third, an acquisition value tax assures local governments of a stable source of revenue that is less affected by movements—particularly downward movements—in property values than a current market value tax. See *infra* pp. 24-29.

Petitioner’s arguments (Pet. Br. 30-39) that the California acquisition value tax is not a rational means to achieve the State’s objectives lack merit. Petitioner either mischaracterizes the State’s legitimate purpose (see Pet. Br. 32) or rests her argument on the irrelevant assumption that a current market value tax is more “fair” or “equitable” (see Pet. Br. 34, 36) than an acquisition value tax. Given this premise, petitioner then argues that there are ways to achieve the purposes underlying California’s tax while retaining current market value assessments. See, e.g., Pet. Br. 35. Such arguments “misapprehend the nature of rational-basis scrutiny, which is the most relaxed and tolerant form of judicial scrutiny under the Equal Protection Clause.” *City of Dallas v. Stanglin*, 490 U.S. 19, 26 (1989). The method of taxation chosen by California need not be the best choice—indeed, it need not even be a wise choice—but our federal system leaves such choices to the political processes of the States, as long as there is some rational basis for the decision. *Rodriguez*, 411 U.S. at 40. The invitation by petitioner and her amici to second-guess the wisdom of California’s acquisition value property tax system should be addressed to the political branches, and not to the judiciary.

II. Petitioner places substantial reliance on her argument that this Court’s decision in *Allegheny Pittsburgh Coal Co. v. County Commission*, 488 U.S. 336 (1989), requires the invalidation of the California tax. But in *Allegheny Pittsburgh*, the State of West Virginia had chosen as a matter of state policy to tax property on the basis of its current market value. Because the “aberrational assessment policy” of the Webster County tax assessor was not a rational means to achieve West Virginia’s objective of assessing property at current market value, the Court found that the resulting disparities in assessments violated the Equal Protection Clause.

Allegheny Pittsburgh neither requires States to tax on the basis of the current market value of property nor suggests that an acquisition value system of property taxation would be irrational. Because the State of West Virginia—unlike California—had not adopted an acquisition value tax system, *Allegheny Pittsburgh* says nothing about the legitimacy of a State’s choice of such a tax system. To the contrary, this Court has long held that under the Equal Protection Clause, a “State is not limited to *ad valorem* taxation.” *Ohio Oil Co. v. Conway*, 281 U.S. 146, 159 (1930). Moreover, this Court consistently has upheld against equal protection challenges state taxes that were not based on the current market value of property. See *Bell’s Gap R.R. v. Pennsylvania*, 134 U.S. 232 (1890); *Ohio Oil Co.*, 281 U.S. at 161. The decision in *Allegheny Pittsburgh* is entirely consistent with this line of cases.

III. Finally, in an effort to escape the highly deferential standard of review applicable to state taxing schemes, petitioner argues that the California acquisition value tax violates the constitutional right of interstate travel. However, petitioner lacks standing to bring this claim; she can point to no record evidence supporting a claim that her right of interstate travel has been in any way impaired. See *Barrows v. Jackson*, 346 U.S. 249, 255

(1953); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166 (1972).

Even if the Court were to reach this issue, it is plain that California's tax does not draw explicit residency distinctions of the sort that have characterized those state laws found to have burdened the right to travel. The tax is not a law that expressly "den[ies] newcomers 'basic necessities of life' " or citizenship. See *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 269 (1974) (denial of state-sponsored health care); see also *Shapiro v. Thompson*, 394 U.S. 618 (1969) (basic welfare benefits); *Dunn v. Blumstein*, 405 U.S. 330 (1972) (right to vote). Nor is it a law that "creates permanent distinctions among residents based on the length or timing of their residence" within the State. See *Attorney General v. Soto-Lopez*, 476 U.S. 898, 907 (1986) (plurality opinion) (striking down law that tied veterans' benefits to length of residency); *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985) (same); *Zobel v. Williams*, 457 U.S. 55 (1982) (striking down law that provided payments to residents depending upon length of residency).

In sum, all of the state laws that have been struck down as constitutionally invalid because of their impact on the right of interstate travel "create[d] 'fixed, permanent distinctions between . . . classes of concededly bona fide residents' based on when they arrived in the State." *Hooper*, 472 U.S. at 617 (quoting *Zobel*, 457 U.S. at 59); see also *Soto-Lopez*, 476 U.S. at 908-09 (plurality opinion). Under the California tax, by contrast, all property is taxed according to its value at acquisition, regardless of whether the taxpayer is a California resident or nonresident, and regardless of whether she has moved to the State recently or lived there her entire life. California's acquisition value tax is not subject to heightened scrutiny as a law impairing the right of interstate travel.

ARGUMENT

I. CALIFORNIA'S TAX ON THE ACQUISITION VALUE OF PROPERTY DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

Under challenge in this case is California's sovereign choice to adopt a system that imposes a property tax based upon the acquisition value of property. The standards under which the validity of this choice should be reviewed by this Court are well established. Under principles of equal protection that have "weathered nearly a century of Supreme Court adjudication," *Kahn v. Shevin*, 416 U.S. 351, 355-56 (1974), the choice by government of taxing methodology is entitled to substantial deference by the federal courts and must be upheld so long as "any state of facts reasonably can be conceived that would sustain it." *Allied Stores, Inc. v. Bowers*, 358 U.S. 522, 528 (1959).

A. Under Principles Of Federalism Inherent In The Constitution, The States Are Accorded Wide Discretion In Fashioning Methods of Taxation.

The power to tax is a sovereign power, reserved to the States by the Tenth Amendment to the Constitution of the United States. Consistent with the balance of governmental power between federal and local interests embodied in the constitutional text, this Court "ha[s] declined to undertake the essentially legislative task of establishing a 'single constitutionally mandated method of taxation.'" *Goldberg v. Sweet*, 488 U.S. 252, 261 (1989) (quoting *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 171 (1983)). Instead, the States have been free to exercise their "very wide discretion in the laying of their taxes," *Allied Stores*, 358 U.S. at 526, by adopting a host of methods of taxation.

It is undisputed that, in reviewing state taxing schemes, this Court does not "sit as a superlegislature to judge

the wisdom or desirability of legislative policy determinations." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (per curiam). As long as no fundamental right or suspect class is impaired by California's choice of tax methodology—and that clearly is the case here (see *infra* pp. 41-47)—California's property tax system should be upheld if the State's purpose is legitimate and the means employed by the State "bear some rational relationship" to its purpose. *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 40 (1973). Indeed, in the area of tax policy, "even more than in other fields," state policy choices are accorded the strongest presumption of constitutionality. *Madden v. Kentucky*, 309 U.S. 83, 88 (1940). "The burden is on the one attacking the legislative arrangement to negative *every conceivable basis* which might support it." *Id.* (emphasis added); accord *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973).

Petitioner would have this Court work a revolution in the judicial review of taxation. Time and again her argument comes back to its underlying theory—that current market value provides the only legitimate basis for taxation because only a "market value" system ensures that (1) wealthier taxpayers pay more (see, *e.g.*, Pet. Br. 33); and (2) the amount of tax is related to the governmental benefits received (see, *e.g.*, *id.* at 38). In fact, however, it is not clear that these assumptions are correct. See *infra* pp. 19-20 (discussing taxpayers' "ability to pay"). More important, petitioner's theory, if accepted, would jeopardize the constitutionality of every provision in the federal and state tax codes that furthers any policy other than those she favors.⁹ Indeed, accept-

⁹ For example, accepting her position would cast doubt on taxing capital gains at lower rates than earned income because that change in the tax code, "[r]ather than being based on ability to pay, by its design . . . systematically ignores that critical factor." Pet. Br. 33. Similarly, accepting her position would raise questions about such commonplace tax practices as allowing deductions for home mortgage

ance of petitioner's theory, and its underlying assumptions, would alter fundamentally the existing role of tax systems in both federal and state government.¹⁰ Such a restriction on the power to tax would be flatly inconsistent with long-standing equal protection principles, and must be rejected.

B. California's Tax On The Acquisition Value Of Property Plainly Satisfies Rational Basis Scrutiny Under The Equal Protection Clause.

At the outset, it is well established for purposes of constitutional analysis that this Court will accord "respectful consideration and great weight to the views of the state's highest court" concerning the state interests underlying a challenged provision of state law. *California*

interest but not for rent, the nontaxation of accrued interest on insurance policies and annuities, local tax abatements for new businesses, and many more.

¹⁰ This Court has long held that the amount of general revenue taxes collected need not be related to the value of the governmental services provided. See *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 622 (1981).

"A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good."

Id. at 622-23 (quoting *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 521-23 (1937) (citations and footnote omitted)); see also *Pennell v. City of San Jose*, 485 U.S. 1, 23 (1988) (Scalia, J., concurring in part and dissenting in part) ("because of the operation of the Takings Clause our governmental system has required [subsidies for various groups] to be applied, in general, through the process of taxing and spending, where both economic effects and competing priorities are more evident").

Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 111 (1980) (citation omitted); see also *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n.7 (1981). The California Supreme Court has set forth two of the purposes underlying the California acquisition value tax system—avoiding taxation on unrealized appreciation and providing property owners with predictable future tax liability based on the price the owner was willing to pay for the property. *Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization*, 583 P.2d 1281, 1283 (Cal. 1978). The California Court of Appeal in *R.H. Macy & Co. v. Contra Costa County*, 276 Cal. Rptr. 530, 535 n.2 (Cal. Ct. App. 1990), *cert. granted*, 111 S. Ct. 2256, *cert. dismissed*, 111 S. Ct. 2923 (1991), articulated a third rationale: an acquisition value tax assures a stable source of local government revenue that is less vulnerable than a market value tax to short-term deflation in local real estate prices. All of these legitimate state interests may reasonably be considered part of the “purpose and policy” underlying California’s adoption of an acquisition value tax scheme, *Allied Stores*, 358 U.S. at 529, and each independently provides ample basis for upholding the tax system against an equal protection challenge.

The portion of petitioner’s brief (Pet. Br. 30-37) devoted to attacking the nexus between the legitimate state purposes underlying the California tax and the actual operation of the law is fundamentally flawed. Either petitioner mischaracterizes the undisputed purposes—of the tax in order to knock down a straw-man argument (*id.* at 32, 37; see *infra* pp. 18-19, 25), or petitioner concedes the validity of the purpose articulated but argues that an acquisition value tax is not the *best* means to achieve the State’s goals (Pet. Br. 34-35; see *infra* pp. 20-21). Indeed, the briefs of petitioner and her *amici* often do little more than assert that California’s choice of such a tax was unwise. See, *e.g.*, Pet. Br. 12-13; Br. *Amicus Curiae* of League of Women Voters 7-10; Br.

Amicus Curiae of Int’l Ass’n of Assessing Officers 18-19; Br. *Amicus Curiae* of the Amer. Planning Ass’n 11-18.¹¹

1. An Acquisition Value Tax Protects Property Owners From Being Taxed On Unrealized Appreciation In Property Values.

One purpose underlying California’s acquisition value tax is to protect property owners from being taxed on unrealized appreciation in the value of their property—*i.e.*, to avoid the situation in which homeowners may be taxed out of their homes, or to prevent, what is equally disturbing, residents on fixed incomes from diverting so much of their resources to housing that they are unable to purchase adequate food, clothing, and health care to ensure their continued welfare. As the California Supreme Court stated in *Amador Valley*, an acquisition value tax avoids taxing “an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales [the owner] can exercise no control.” 583 P.2d at 1293. This Court in *Allegheny Pittsburgh* likewise recognized that California’s acquisition value tax “is grounded on the belief that taxes . . . should not tax unrealized paper gains in the value of the property.” 488 U.S. at 345 n.4.

The history of property taxation in California in the 1970s readily illustrates how a current market value tax system can result in dramatic increases in property taxes in a time of rapid inflation in real property values. Although longtime owners of property share in the increases in value, property taxes cannot be paid out of these unrealized paper increases. Indeed, petitioner concedes that current market value assessments “place[d] a strain on

¹¹ For example, the *Amicus* Brief of the League of Women Voters suggests that the revenues raised by such a system are inadequate to the needs of the State and that its “infrastructure is deteriorating and becoming more inadequate with the passage of every day.” *Id.* at 8. Even if the assertion were true, it cannot be that a court could invalidate a tax law on this basis.

some homeowners when rapid property appreciation outstripped inflation, causing taxes to outpace income." Pet. Br. 34.¹²

The shift from a current market value tax to an acquisition value tax is a rational response to this phenomenon. Under California's acquisition value tax, property is assessed at its value at acquisition (subject to a two-percent annual adjustment for inflation), no matter what increase in market value may follow.¹³ Reassessments to current market value are limited to circumstances where the property changes hands or is substantially improved; the new owner then receives the benefit of the same limits on increases in assessed value into the future.

Petitioner generally concedes that it is legitimate for a State to seek to protect its citizens from losing their homes when inflation outpaces income. This concession is necessary given this Court's deference in determining the legitimacy of state purposes in economic legislation. See *Allied Stores*, 358 U.S. at 528-29. Nonetheless, petitioner

¹² For obvious reasons, a current market value system places inordinate financial strain on persons with fixed incomes. As one commentator has explained, the hardships caused by a tax based on the current market value of property "will be felt most acutely by residents in changing neighborhoods or communities that experience rapid rises in property values. If gentrification occurs and 'yuppies' move in, the elderly, racial minorities, and fixed-income persons can be displaced, partly because longer term residents cannot afford dramatic increases in property taxes." Glennon, *Taxation and Equal Protection*, 58 Geo. Wash. L. Rev. 261, 299 (1990).

¹³ A similar purpose underlies the provisions for taxation of capital gains under the federal income tax laws. The Internal Revenue Code does not tax unrealized gain in the value of a capital asset because of the administrative difficulties of annual valuations and the burden on holders of properties without the resources available to pay the tax, who might be forced to liquidate the asset. 1 B. Bittker & L. Lokken, *Federal Taxation of Income, Estates & Gifts* ¶ 3.5.2 (2d ed. 1989); J. Pechman, *Federal Tax Policy* 109 (4th ed. 1983).

argues that the acquisition value tax scheme is an impermissible response because an acquisition value system does not "more closely approximate a taxpayer's ability to pay than . . . a current market value system." Pet. Br. 32. Common sense refutes petitioner's assertion: while both an acquisition value tax and a market value tax may result in some property owners paying *less* than they can afford, an acquisition value tax is much less likely than a current market value tax to require persons to pay *more* than they can afford because it does not tax unrealized appreciation in property values.¹⁴

In other words, petitioner's analysis of "ability to pay" distorts the State's true purpose by shifting the focus to petitioner's concern that her neighbors may be "*underpaying*" taxes (when measured on a market value basis). That argument neglects the true problem of "overpayment" on unrealized appreciation that California's tax was designed to correct: the situation where skyrocketing real estate prices were driving property taxes beyond some taxpayers' ability to pay. See *supra* pp. 2-3. By divorcing the "value" on which the tax is based from the unpredictable effects of real estate inflation, see *Amador Valley*, 583 P.2d at 1293—i.e., by linking the size of a property tax bill to the taxpayer's demonstrated willingness and ability to pay for the property (acquisition

¹⁴ For example, as between petitioner, who paid \$170,000 for her house in 1988, and a neighbor, who paid something less than \$35,000 for a similar house in the early 1970s (see J.A. 5, 9, 19), it is reasonable to assume that it is *more* likely that petitioner can afford a higher tax than her neighbor.

Under either a market value or acquisition value system, some property owners, either through inattention or unforeseen personal circumstances, might overestimate at the time of their purchase their future ability to pay the tax. But an acquisition value tax lessens this risk by removing the need to predict future changes in the uncertain real estate market. Given California's extraordinary experience in the mid-1970s, it is entirely reasonable for the State to prefer a policy under which fewer taxpayers are taxed beyond their means.

value)—the acquisition value tax rationally responded to the problems associated with taxation on unrealized appreciation.

In the alternative, petitioner concedes that “the ability-to-pay problems of fixed income taxpayers” are a legitimate state concern (Pet. Br. 34), but argues that California could have achieved its purpose without departing from a market value tax system—*e.g.*, by expanding tax forgiveness programs for persons on fixed incomes or by lowering the overall tax rate. *Id.* at 34-35. In fact, the State had tried various tax relief programs in connection with its then-existing current market value tax (see *supra* p. 2) and, through its voters, determined as a matter of policy to replace them with an acquisition value tax system. The fact that *other* “property tax limitation alternatives that provide relief . . . also are readily available,” Pet. Br. 35, which in fact they are not,¹⁵ does not mean that the alternative chosen is irrational. See *Kahn v. Shevin*, 416 U.S. 351, 356 n. 10 (1974).¹⁶

¹⁵ Petitioner’s tax relief proposal is at best only a partial solution to the problems posed by the taxing scheme that existed in California before 1978. It may be that a person facing actual eviction for failing to pay taxes will seek tax relief. But many elderly and fixed-income residents would certainly make significant personal sacrifices before accepting such relief. If these individuals fail to eat properly or to clothe themselves adequately or to maintain their health because they believe they should pay taxes, if at all possible, then individual tax-relief alternatives suggested by petitioner are completely inadequate to promote the public welfare. Given the importance of the State’s purpose in protecting the health and welfare of a class of residents, petitioner’s argument, which completely ignores these social concerns, is unpersuasive.

¹⁶ Petitioner’s *amicus* the International Association of Assessing Officers offers an alternative argument regarding this state purpose. Although conceding that a “pure ‘acquisition value’ system . . . might have some theoretical underpinnings,” the *amicus* asserts that those legitimate interests would support only a “pure” acquisition value system, and California’s tax is insufficiently “pure” because, for example, it “denie[s] ‘acquisition value’ assessment’s benefits . . . to those California property owners who had acquired

Petitioner’s reliance on “available” alternatives (Pet. Br. 35) simply “misapprehend[s] the nature of rational-basis scrutiny.” *City of Dallas v. Stanglin*, 490 U.S. 19, 26 (1989). Even if alternatives exist that might better achieve the legislative purpose or that might do so more “precisely” (Pet. Br. 35)—a suggestion which respondents dispute—the existence of alternatives simply is extraneous to rational basis analysis. *Kahn*, 416 U.S. at 356 n.10; see *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982) (heightened scrutiny). California’s acquisition value tax plainly has a rational relationship to its legitimate purpose of avoiding taxation on unrealized appreciation in property values. No more is required.

2. An Acquisition Value Tax Provides Property Owners With Certain Future Tax Liability Based On The Purchase Price Of The Property.

The California Supreme Court in *Amador Valley* identified another legitimate purpose of an acquisition value tax system: it “enable[s] each property owner to estimate with some assurance his future tax liability.” 583 P.2d at 1293. By adopting an acquisition value tax, California has made property taxes another fixed element of the purchase price of property. As a result, a prospective property owner readily can estimate the maximum future property taxes to which the property will be subject, thereby permitting a more informed decision on his or her ability to afford the property in question.¹⁷

their property before the 1975-76 tax year.” Br. *Amicus Curiae* of Int’l Ass’n of Assessing Officers 15-16. However, the fact that the State’s intent “was never to establish pure ‘acquisition value’ assessing” (*id.* at 17) is irrelevant to the constitutional inquiry; the question is whether California’s property tax—as it exists—is rational. The existence of exemptions from reassessment for certain intra-family transfers and for persons over age 55, see *supra* p. 4 n.4, likewise does not render the tax irrational since these exemptions are supported by their own independent rationales. See *McGowan v. Maryland*, 366 U.S. 420, 426-27 (1961).

¹⁷ Insuring predictability and certainty improves the efficient operation of the real property market. In this respect, an acquisi-

Petitioner begins by asserting that certainty "in and of itself" (Pet. Br. 36) is not a sufficient state purpose to support the tax in question because certainty alone "does not make a tax system either rational or fair." *Id.* at 36. That argument, however, is neither logically nor legally compelling: the fact that *some* tax systems might achieve "certainty" through irrational means simply begs the question whether the concededly legitimate interest in certainty is rationally served by California's acquisition value system. There is no serious argument but that the uniform method of reassessing only at sale provides a direct and logical method of achieving certainty.

In essence, petitioner and her *amici* effectively concede that California's acquisition value tax is a rational means to achieve certainty and predictability,¹⁸ but argue that the tax is nevertheless constitutionally impermissible because it achieves certainty in a manner that is not "fair." Pet. Br. 36; see also Br. *Amicus Curiae* of Amer. Planning Ass'n 17 ("[p]redictability is not the benchmark of fairness or equal treatment") (emphasis omitted). This contention is wrong as a matter of logic, history, and law. First, contrary to petitioner's suggestion, California's acquisition value tax system is not analogous to a situation in which "taxpayers whose street addresses have odd numbers [a]re taxed a fixed amount five times that of taxpayers with even-numbered addresses." Pet. Br. 36. Rather, the "certainty" achieved by the tax is rationally based on tying "value" for purposes of taxation to an

tion value tax (as compared to a current market value tax) is like a fixed rate (as compared to a variable rate) mortgage: it enables purchasers of property to know with certainty their future costs of property ownership without the risk that dramatic market increases will render even the most carefully considered purchase unaffordable at some future date.

¹⁸ Indeed, petitioner's calculation of her own tax liability over the next 10 years (Pet. Br. 3) is possible only because of the certainty provided by California's acquisition value tax. See also Br. *Amici Curiae* of People's Advocate and United Org. of Taxpayers 16.

amount that the taxpayer has the ability and income to pay (*i.e.*, acquisition value of his or her property)—a point that petitioner does not address. A taxpayer reasonably can anticipate and plan for maintaining that level of income.

Second, petitioner's complaints about "fairness" boil down to this: No system of property taxation is "fair" (as a constitutional matter) unless assessments are tied to market value. *Id.* ("interest in certainty explains why the State might wish to adopt fixed valuations . . . but it does not explain why everyone's [market] value is not set as of the same year").¹⁹ Historically, however, taxation has often been based on the value of property at the time it is acquired. Indeed, the California Supreme Court noted the analogy between an acquisition value real property tax and a sales tax. See *Amador Valley*, 583 P.2d at 1294. Both taxes are based upon "the price [the owner] was willing and able to pay for that property," *id.*—an unquestionably permissible basis for taxation. See Br. *Amicus Curiae* of Int'l Ass'n of Assessing Officers 15 (conceding that acquisition value is a rational means to ensure predictability and allows reliance on decisions and expectations at time of purchase).

Third, the question of whether an acquisition value or a market value system is more "fair" simply is not one answered by the federal courts under the Equal Protection Clause. The "fairness" of the distribution of economic burdens among nonsuspect classes of citizens is

¹⁹ Petitioner's concession that the Constitution would permit property to be assessed at its market value at some year fixed in the past, so long as the same base year is used for all properties, Pet. Br. 36, wholly undermines her claim. Because property values appreciate at different rates in various regions of the State and County, as petitioner concedes, *id.* at 7, a tax based on market value at some fixed point in time would result in precisely the same sorts of disparities under challenge here. Petitioner's own argument thus concedes that property taxes need not be tied to current market values. See Br. *Amici Curiae* of Governor Pete Wilson, *et al.* 22.

precisely the type of "legislative policy determination[]" that the Constitution leaves to the citizens of the various States. *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976). As long as California's choice of tax methodology "bear[s] some rational relationship to legitimate state purposes," *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 40 (1973), the Equal Protection Clause demands no more. Because the acquisition value tax provides a rational means to the State's interest in providing property owners with a more certain level of future tax liability, the acquisition value tax survives rational basis scrutiny under the Equal Protection Clause.

3. An Acquisition Value Tax Provides A Stable Source Of Revenue For Local Governments.

The California Court of Appeal in *R.H. Macy & Co. v. Contra Costa County* noted a third purpose of the acquisition value tax: it assures "a stable revenue source for local governments." 276 Cal. Rptr. 530, 535 n.2 (1990), *cert. granted*, 111 S. Ct. 2256, *cert. dismissed*, 111 S. Ct. 2923 (1991). Because an acquisition value tax is purposely divorced from the market value of the property, the tax base is less subject to the fluctuations of the real estate market. Under a current market value system, the assessed value of every property changes with the market, while under an acquisition value tax only the assessed value of those properties changing hands is affected by market conditions. Local government financing thereby is placed upon a more stable base and cushioned from periodic swings in the real estate market.²⁰

This cushioning effect of an acquisition value tax is especially important given "the recent cooling off of the real estate market" in California.²¹ *Br. Amicus Curiae*

²⁰ See also *Br. Amicus Curiae* of Calif. Taxpayers' Ass'n 9-10; *Br. Amici Curiae* of Howard Jarvis Taxpayers Ass'n, Paul Gann's Citizens Comm. & Pacific Legal Found. 14.

²¹ This development also belies petitioner's prediction that the asserted disparities "will continue to grow worse," *Pet. Br.* 8, a

of Int'l Ass'n of Assessing Officers 13. Under either a market value system or California's acquisition value tax scheme, properties are reassessed if their market value falls below their assessed value (see *supra* p. 4 n.5). However, under the existing California system, properties that have been held during a period of real estate inflation will have market values in excess of their assessed value. Thus, with tax rates held constant, under an acquisition value system—unlike a market value system—a decline in the real estate market does not cause immediate reduction of property tax revenues, thereby bringing more certainty and stability to local government finance.

Petitioner does not dispute that this is a legitimate purpose; nor does she dispute that the acquisition value system is a reasonable means to accomplish this purpose. Instead, she simply disparages the State's motive at issue, arguing that the actual purpose of the California tax is to "impose huge tax penalties on new buyers simply to raise revenue in a politically expedient manner." *Pet. Br.* 39.

In the first instance, petitioner is almost certainly wrong that the burden of California's property tax falls primarily on recent buyers. Elementary economic theory recognizes that the burden of property taxes is actually shared by both the purchaser and the seller of real estate. This is so because a prospective purchaser of real estate will take into account the future tax burden and, depending on the elasticities of the market, will effectively demand a corresponding reduction in the purchase price of the property. See, e.g., G. L. Bach, *Economics: An Introduction to Analysis and Policy* 509 (9th ed. 1977); DeCanio, *supra*, at 55-56. In a buyer's market, such as that which exists in California today, the incidence of the property tax falls largely, if not entirely, upon sellers of

prediction that she concedes depends, at the extreme, on "property continu[ing] to appreciate at the rate it has since the Proposition 13 baseline year of 1975." *Id.*

real estate—many of whom may be the very longtime owners whom petitioner presumes to be a favored class under the California tax.²²

Even if “new buyers” of real property currently pay property taxes that are, on average, higher than average taxes paid by longtime property owners, that “distinction”—between “more recent” and “less recent” purchasers of property—certainly does not establish that an acquisition value tax is an *irrational* means to achieve the concededly legitimate state purposes. Instead, petitioner’s argument suggests an approach in which this Court would inquire whether there is any conceivable wrongful purpose that can be ascribed to the State. See Pet. Br. 30-39. That approach is completely at odds with established equal protection doctrine, which instead asks whether there is any conceivable *proper* purpose which would *sustain* the legislation. See *Clements v. Fashing*, 457 U.S. 957, 963 (1982) (plurality opinion); *Allied Stores*, 358 U.S. at 528.

Moreover, petitioner and her *amici* suggest that this case reflects the “tyranny of the majority” (Br. of League of Women Voters 11; see Pet. Br. 14-15, 23) over a “disfavored” group of taxpayers (Pet. Br. 23), and that this Court therefore should apply something more than the rational basis scrutiny generally applicable to economic regulation. Br. *Amicus Curiae* of League of Women Voters 11 (this Court should “exercise its role” as a “supervisor of the political process”) (capitalization omitted).

This argument both is factually wrong and would work a sea change in the law of equal protection. There is no

²² It is also not obvious that petitioner’s tax bill will go down if she prevails here. If the acquisition value provisions of Article XIII A are struck down, California might revert to a current market value system. See Cal. Const. art. XIII. If so, petitioner’s taxes will increase—even if rates are unchanged—since her property presently is assessed below its market value. See J.A. 20.

basis to the claim that a significant majority of residents imposed an undue burden on a politically helpless minority. It is not clear that a substantial majority of California’s citizens owned homes at the time the State adopted its acquisition value tax. Under the market value system, non-homeowners faced increasing rents demanded by landlords to pay rising property taxes. Thus, these voters (like homeowners) reasonably could have seen their interests best served by an acquisition value tax. That kind of political choice bears no relationship to the concerns raised by the “discrete and insular” minority, *United States v. Carolene Prods. Co.*, 304 U.S. 144, 152 n.4 (1938), that could warrant judicial supervision of the political process. The suggestion that “more recent” purchasers of real property—who may be, but are not necessarily, “newcomers” or new residents of the State or even first-time buyers—are a suspect class is indefensible on its face. Recent buyers of property plainly are not “saddled with such disabilities or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.” *Rodriguez*, 411 U.S. at 28.²³

Petitioner ignores the fact that virtually all legislation benefits some group at the expense of another. See, e.g., *Williamson v. Lee Optical, Inc.*, 348 U.S. 483 (1955) (rule benefitting ophthalmologists and optometrists at the expense of opticians). Some groups are better organized

²³ Even if “new buyers” of real property somehow did constitute a suspect class under equal protection analysis, petitioner has offered no evidence that the State intended to discriminate against them through the acquisition value tax. Assuming *arguendo* that California’s acquisition value tax disproportionately burdens recent purchasers of property, and that recent purchasers are entitled to heightened protection under the Equal Protection Clause, petitioner still must produce evidence that the discriminatory impact of the tax was *intended*. See *Personnel Adm’r v. Feeney*, 442 U.S. 256, 273-74 (1979); *Washington v. Davis*, 426 U.S. 229 (1976).

or have more at stake than others; other groups command a majority simply because of the persuasiveness of their views. In any case, deference to the will of the majority is the rule—not the exception—in our constitutional form of government. It is only when the burdened group is a “discrete and insular minorit[y],” *Carolene Prods.*, 304 U.S. at 152 n.4—i.e., a suspect class—that legislation is subject to heightened constitutional scrutiny. Otherwise, the political process is allowed to operate restrained only by the deferential rational basis test.²⁴ Under that standard, the California acquisition value tax withstands scrutiny under the Equal Protection Clause.

In sum, given the circumstances when real estate prices are in a long-range period of flux, any property tax scheme will inevitably disadvantage someone. Government is not powerless to attempt to alleviate some of the resulting inequities just because others will arise. The

²⁴ Petitioner also hints that heightened scrutiny may be appropriate in this case because Article XIII A was enacted through direct voter action rather than through the legislative process, see Pet. Br. 48 n.37—a position embraced with startling enthusiasm by *amicus* League of Women Voters, see Br. *Amicus Curiae* of League of Women Voters 11-13 & n.10 (citizens, unable to grasp “‘subtle, silent, or complex’” issues, may engage in “‘mob rule’” when allowed self-governance; consequently, “[t]he need for judicial review increases as direct democracy increases”) (citation omitted). This Court has never before indulged in such a patronizing view of the democratic process. There is no basis for holding that democracy is like a cigarette, *viz.*, it is more dangerous if it is not “filtered” through a representative body.

Indeed, the very cases cited by *amicus* make clear that “[i]t is [constitutionally] irrelevant that the voters rather than a legislative body enacted” a challenged provision of law. *Citizens Against Rent Control/Coalition for Fair Hous. v. City of Berkeley*, 454 U.S. 290, 295 (1981) (emphasis added); see also *Lucas v. Forty-Fourth Gen. Assembly*, 377 U.S. 713, 737 (1964) (“We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is *without federal constitutional significance*”) (emphasis added). Moreover, for reasons discussed *infra* at pp. 41-47, the California tax in no way burdens the right of interstate travel.

inequity that the acquisition value tax addressed—people being taxed out of their homes or into poverty by circumstances over which they had no control—is at least as serious as the imbalance measured by market value about which petitioner complains. But these are matters which must be left to the political process. California already has made some adjustments to Article XIII A, as originally enacted,²⁵ and there is no reason to believe that the State and its citizens are not fully capable of developing and implementing their own rational tax policy.²⁶ Certainly, there is reason to doubt whether federal courts, which lack any representative qualities, will perform those functions “better” or even as well.

II. CALIFORNIA'S ACQUISITION VALUE TAX IS FULLY CONSISTENT WITH THIS COURT'S DECISION IN *ALLEGHENY PITTSBURGH*.

In light of the difficulty in asserting that the California acquisition value tax does not meet the extremely deferential standards of rational basis scrutiny (see *supra* pp. 13-29), petitioner not surprisingly devotes nearly half of her argument to the claim that the decision in *Allegheny Pittsburgh Coal Co. v. Coun.'s Commission*, 488 U.S. 336 (1989), is controlling in this case. Pet. Br. 14-30.²⁷ In

²⁵ For example, Article XIII A has been amended to allow assessments to “be reduced to reflect substantial damage, destruction or other factors causing a decline in value.” Cal. Const. art. XIII A, § 2(b).

²⁶ Particularly telling in this respect is the argument by *amicus* International Association of Assessing Officers that California's acquisition value tax is unconstitutional because California's “coefficient[] of dispersion,” which it offers as a measure of the deviation of assessments from market value, ranks it thirty-third among all States. See Br. *Amicus Curiae* of the Int'l Ass'n of Assessing Officers 12. Presumably, if this “coefficient of dispersion” is the constitutional linchpin, then the taxing schemes of 17 other States are also constitutionally suspect.

²⁷ The *Allegheny Pittsburgh* decision was the first time since 1931 that this Court had concluded that the application of a state

that case, this Court held that when a State is operating under a current market value system, a local assessor cannot assess certain properties at their most recent purchase price without adjusting the assessments of other properties seasonably to reflect the overall increase in real estate prices. 488 U.S. at 345-46. Nothing in *Allegheny Pittsburgh* suggests, however, that a State may not, consistent with the Equal Protection Clause, adopt an acquisition value system of property taxation and enforce it consistently, as California has done here.

The flaw in petitioner's reliance upon *Allegheny Pittsburgh* is her failure to give credence to the legitimate purposes underlying California's acquisition value tax. California has adopted as a matter of policy an acquisition value property tax. By contrast, West Virginia's property tax was based exclusively on market value. The difference in the policies underlying the California and West Virginia tax schemes is critical. California's acquisition value assessment practices clearly further the State's policies embodied in Article XIII A of the state constitution. The tactics of the local assessor in *Allegheny Pittsburgh*, by contrast, did not and could not achieve any legitimate purpose underlying West Virginia's market value taxing scheme. Petitioner's heavy reliance on *Allegheny Pittsburgh*, therefore, underscores the fact that, in petitioner's view, a market-value property tax system is the only one the Constitution permits.

property tax failed to satisfy the Equal Protection Clause. See Cohen, *State Law in Equality Clothing: A Comment on Allegheny Pittsburgh Coal Company v. County Commission*, 38 UCLA L. Rev. 87, 91 n.25 (1990). The 1931 case was *Cumberland Coal Co. v. Board of Revision of Tax Assessments*, 284 U.S. 23 (1931), which, like *Allegheny Pittsburgh*, involved discriminatory assessments of coal-bearing property in a State which required assessment on the basis of current market value.

A. The Holding In *Allegheny Pittsburgh* Does Not Dispose Of This Case.

At issue in *Allegheny Pittsburgh* was the operation of the West Virginia property tax system, which, according to the West Virginia Constitution, required that all property "shall be taxed in proportion to its value," meaning current market value. W. Va. Const. art. X, § 1; see 488 U.S. at 338. The tax assessor in Webster County, West Virginia, "apparently on her own initiative," assessed property in the county at 50% of appraised value and fixed appraised value at the most recent purchase price of the property, with occasional adjustments. *Id.* at 338, 345. The adjustments were insufficient to prevent considerable disparities in assessments from developing over time. Property that had not been sold recently was assessed at a value well below that of comparable property that had been the subject of a recent sale. *Id.* at 341.

This Court held that the Webster County assessment practices violated the Equal Protection Clause. The disparities in assessments of comparable property were not the result of occasional errors or mistakes in judgment by the assessor; instead, they were the result of "intentional systematic undervaluation by state officials." 488 U.S. at 345-46 (quoting *Sunday Lake Iron Ore Co. v. Township of Wakefield*, 247 U.S. 350, 352-53 (1918)). Although the Court recognized that the States have broad powers to classify properties, 488 U.S. at 344, the State of West Virginia did not purport to adopt different classifications for the properties subject to differing assessments. *Id.* at 345 ("West Virginia has not drawn such a distinction"). Instead, the State's purpose was to tax all properties at their current market value. Its "Constitution and laws provide[d] that all property of the kind [in question] be taxed . . . according to its estimated market value," and this Court found "no suggestion" that the "State may have adopted a different system in practice from that specified by statute." *Id.*

Webster County sought to justify its assessment practices on the ground that they were "rationally related to its purpose of assessing properties at true current value." *Id.* at 343. This Court rejected that justification. In theory, "[t]he use of a general adjustment as a transitional substitute for an individual reappraisal violates no constitutional command." *Id.* But, as employed by Webster County, the assessment practices violated the Equal Protection Clause because they were not a rational means to the State's concededly legitimate end: they failed to ensure "the seasonable attainment of a rough equality in tax treatment of similarly situated property owners." *Id.* Given this impermissible disparity in assessment, the Court concluded that petitioners could "not be remitted by the State to the remedy of seeking to have the assessments of the undervalued property raised," as the West Virginia Supreme Court had done. *Id.* at 346. In so holding, the Court in *Allegheny Pittsburgh* made clear that it did not intend to alter long-standing equal protection principles, which recognize that any state tax classification should be upheld so long as it "rests upon some reasonable consideration of difference or policy." *Id.* at 344 (quoting *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 573 (1910)).

In footnote four to its opinion, the Court expressly rebuffed any suggestion that its decision in *Allegheny Pittsburgh* would invalidate California's acquisition value tax:

We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State, generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as "Proposition 13." Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred or constructed upon, or in a limited manner for inflation. Cal. Const., Art. XIII A,

§ 2 (limiting inflation adjustments to 2% per year). The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property.

488 U.S. at 344 n.4 (emphasis added). As this Court anticipated in footnote four, *Allegheny Pittsburgh* is not dispositive because that case involved an "aberrational enforcement policy" applied in a current market value system—as opposed to California's acquisition value system which is "grounded on the belief that taxes should be based on the original cost of property" in order to further significant state interests that were being impaired under the pre-existing taxing scheme. *Id.* *Allegheny Pittsburgh* is thus fully consistent with the constitutionality of California's acquisition value tax.

B. *Allegheny Pittsburgh* Does Not Require That Taxes Be Based On The Current Market Value Of Property.

Petitioner argues that the California acquisition value tax is unconstitutional under *Allegheny Pittsburgh* because it "fail[s] to meet the federal constitutional requirement—the 'seasonable attainment of a rough equality in tax treatment of similarly situated property owners.'" Pet. Br. 17 (quoting 488 U.S. at 342-43). This argument overlooks the fact that Webster County violated the Equal Protection Clause in its failure to achieve "rough equality" in market value assessments only because the purpose of the West Virginia tax law was to assess properties equally at their current market value. Under its acquisition value system, California's tax does achieve equality in tax treatment of similarly situated taxpayers: all property is taxed at acquisition value and all taxpayers whose property has the same acquisition value are taxed identically.²⁸ The dispositive difference is that California, un-

²⁸ Petitioner asserts that the court of appeal upheld the California tax on the ground that it "legislatively creates a unique

like West Virginia, has elected not to continue to base its property tax on market value.

1. The "disparities" that petitioner identifies (Pet. Br. 2-7) exist *only* by assuming that current market value must be the sole basis of measuring assessed value. If acquisition value is accepted as a rational and legitimate basis for assessment, as it should be (see *supra* pp. 13-29), then the so-called disparities simply evaporate. In fact, if acquisition value is accepted as a rational basis for comparison, then a tax on current market value will result in widespread disparities among taxpayers with similar acquisition values.²⁹

Petitioner's argument for "rough equality" in market value, if accepted by this Court, would preclude the States from taxing property on any basis other than current market value. However, nothing in the Equal Protection Clause supports such a limitation on the States' sovereign authority to tax. To the contrary, this Court has made clear that the "inflexible restrictions upon the taxing pow-

acquisition value 'class' for each taxpayer to pay taxes based on 'each owner's assessment,' thus permitting the gross disparities found impermissible in *Allegheny*." Pet. Br. 23. To the contrary, the court of appeal's analysis is identical to that stated here—that "California does not discriminate against similarly situated property owners because each owner's assessment is based on acquisition cost." Pet. App. A22. But, regardless, if the California tax is seen as classifying property on the basis of acquisition value, rather than treating all property owners as in the same class, the constitutional analysis is essentially unchanged. Such a classification scheme "reflect[s] pre-existing differences" in the acquisition value of the property, *Williams v. Vermont*, 472 U.S. 14, 27 (1985), and is rationally related to the same three legitimate state ends.

²⁹ Of course, respondents do not mean to suggest that acquisition value taxation is constitutionally required, merely that it is one of many methods of taxation that are within the realm of rational state choice permitted by the Equal Protection Clause.

ers of the state [contained in state constitutions³⁰] were not to be insinuated into that meritorious conception of equality which alone the Equal Protection Clause was designed to assure." *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362, 368 (1940).

2. Moreover, this Court consistently has upheld against equal protection challenges state taxes that were not based on the current market value of property. In *Bell's Gap R.R. v. Pennsylvania*, 134 U.S. 232 (1890), this Court upheld an annual Pennsylvania tax on the par value, rather than the market value, of bonds. The tax was assessed against bondholders at the rate of three mills per dollar of the par value of the bond. The petitioner challenged the tax as invalid because "the nominal value of the bonds is not their real value" and so the tax was not based on the current market value of the bond. *Id.* at 235. This Court held that regardless of whether the par value of the bond was its current value, the Equal Protection Clause did not bar the Pennsylvania tax. This Court reasoned that "the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation." *Id.* at 237. If the Equal Protection Clause were so construed, "it would not only supersede all those constitutional provisions and laws of some of the States, whose object is to secure equality of taxation, and which are usually accompanied with qualifications deemed material; but it would render nugatory those discriminations which the best interests of society require." *Id.*

Similarly, in *Ohio Oil Co. v. Conway*, 281 U.S. 146 (1930), this Court upheld a Louisiana severance tax on the quantity of oil produced. The Louisiana Constitution

³⁰ For example, the West Virginia Constitution provides that "taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value," Art. X, § 1, which, as this Court stated in *Allegheny Pittsburgh*, requires comparable property to "be taxed at a rate uniform throughout the State according to its estimated market value." 488 U.S. at 345.

authorized severance taxes on “either the quantity or value of the product at the time and place where it is severed,” and the Louisiana legislature enacted a tax on oil at a variable rate per barrel produced based on the “gravity” of the oil produced. *Id.* at 150-51 (quoting La. Const. art. X, § 21). The petitioner’s complaint alleged that the tax resulted in differing effective tax rates ranging from three percent of value to seven and one-half percent of value. This Court recognized that the tax was “a tax according to quantity” and “not strictly *ad valorem*.” *Id.* at 158. It nevertheless upheld the tax under the Equal Protection Clause, stating that a “State is not limited to *ad valorem* taxation,” *id.* at 159, and rejecting as “wholly inadmissible” any contention “that the State could tax only on a strictly *ad valorem* basis,” *id.* at 161.

Allegheny Pittsburgh is perfectly consistent with these cases. The Court was careful to note that there was “no suggestion” in the record that West Virginia’s tax system was based on anything other than current market value assessments. 488 U.S. at 345. Thus, *Allegheny Pittsburgh* simply held that when a State is assessing property under a current market value system, a local assessor cannot assess property at its most recent purchase price without making general adjustments to the assessments of other properties that “are accurate enough over a short period of time to equalize the differences in proportion between the assessments.” *Id.* at 343. Nothing in *Allegheny Pittsburgh*, or in any of this Court’s prior decisions, indicates that a State may not choose a method of taxation other than a tax on current market value.

C. *Allegheny Pittsburgh* Does Not Hold That An Acquisition Value Tax Is Irrational.

Petitioner argues that this Court in *Allegheny Pittsburgh* held that a tax assessed on the acquisition value of property lacks any “reasonable consideration of difference or policy.” Pet. Br. 31 (quoting *Allegheny Pittsburgh*, 488 U.S. at 344). Petitioner contends that because the

operation of the California tax is indistinguishable from the Webster County assessment practices in *Allegheny Pittsburgh*, *id.* at 18-19, it must be struck down.

The premise of this argument is fundamentally flawed. This Court in *Allegheny Pittsburgh* did not hold that an acquisition value tax lacks any rational basis. The question before the Court in *Allegheny Pittsburgh* was whether the Webster County assessment practices at issue could be justified as “rationally related to [the State’s] purpose of assessing properties at true current value.” 488 U.S. at 343. The Court did not address the legitimate state interests that would support an acquisition value tax, much less determine that such interests were irrational. Petitioner’s statement to the contrary (Pet. Br. 30) is flatly incorrect.³¹

Petitioner argues that, even if this Court did not hold that acquisition value systems are irrational, there is no “distinction [of] constitutional relevance” between the “law of the state generally applied” (California) and an “aberrational enforcement policy” (Webster County) as long as both systems are “functionally identical.” Pet. Br. 24. However, the relevant “distinction” suggested by footnote four in *Allegheny Pittsburgh* is not a question of “legislative classification” as opposed to “administrative classification,” as petitioner suggests. Pet. Br. 26-29.

³¹ The fact that arguments in favor of an acquisition value tax system might have been raised in the briefs before this Court in *Allegheny Pittsburgh*, see Pet. Br. 30, 32 n.19, 36 n.24, is simply irrelevant. This Court did not address those justifications because Webster County conceded that the State of West Virginia was operating a current market value system. The only justification that Webster County could offer for its assessment practices—that they were “rationally related to its purpose of assessing properties at true current value”—was simply, and correctly, rejected by the Court. 488 U.S. at 343. Nothing in *Allegheny Pittsburgh* suggests that the different justifications for an acquisition value tax are not legitimate, and, in fact, they plainly are. See *supra* pp. 17-29.

Instead, the fact that the acquisition value tax is the law of the State of California is significant because respondents—unlike Webster County—are not limited to justifying the State's assessment practices with reference to West Virginia's objective of taxing property based on current market value.³² 488 U.S. at 343; see *supra* p. 30.

In sum, petitioner's repeated assertion that California's system of property assessment is indistinguishable in operation from the Webster County assessment scheme struck down in *Allegheny Pittsburgh* completely misses the point. The crucial fact that distinguishes *Allegheny Pittsburgh* from this case is that West Virginia—unlike California—had not adopted an acquisition value method of taxation. West Virginia required property to be taxed at its current market value, and Webster County had not

³² Petitioner and her amici argue that upholding California's acquisition value tax in the face of *Allegheny Pittsburgh* "would radically transform the relations between federal courts and state law." Pet. Br. 27; Br. Amicus Curiae of Building Indus. Ass'n of Southern California 14-18. Their fears are baseless. This Court's recognition that California's adoption of an acquisition value tax is distinguishable from "the aberrational enforcement policy" in *Allegheny Pittsburgh* would not "impermissibly and unnecessarily interject courts into decisions about whether [state] actions comport with state law or policy." Pet. Br. 29. Rather, such a distinction merely reflects the fact that equal protection analysis requires some inquiry into state law—at least to the extent necessary to decide whether there are legitimate state purposes that would sustain the State's action. See *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 365 (1973).

In *Allegheny Pittsburgh*, this Court noted that the Webster County assessment practices did not rise to the level of state policy and so had to be justified by reference to the State's choice of a current market value system. 488 U.S. at 345. Compliance with state law, however, was not a dispositive consideration; indeed, the Court accepted the West Virginia Supreme Court's determination that the assessment practices did not violate state law. *Id.* at 346. Thus, it is neither impossible nor extraordinary for the federal courts to undertake the necessary inquiry into legitimate state purposes without "transform[ing] every intentional violation of state law into a constitutional claim." Pet. Br. 28.

"adopted a different system in practice from that specified by statute"—a system that "*may be valid* so long as the implicit policy is applied evenhandedly." *Id.* at 345 (emphasis added). Instead, the Webster County assessment practices were an "aberrational enforcement policy," *id.* at 344 n.4, that could be justified only by reference to the state policy of market value taxation. Because the actual assessment practices were *not* rationally related to the policy of assessing properties at current market value, the Court held that they violated the Equal Protection Clause. *Id.* at 345-46.

Unlike Webster County, which was required to justify its assessment practices by reference to the State's choice of a current market value taxing method, California's acquisition value tax was adopted as an amendment to the California Constitution for the specific purpose of overriding the pre-existing requirement that property be taxed at current market value. Because California's acquisition value tax system is a rational means to further the legitimate state interests that led to its adoption, see *supra* pp. 17-29, that system readily withstands analysis under the Equal Protection Clause.

III. CALIFORNIA'S TAX ON THE ACQUISITION VALUE OF PROPERTY DOES NOT VIOLATE PETITIONER'S RIGHT TO TRAVEL.

Petitioner argues at length that the California tax should be subjected to heightened judicial scrutiny because it infringes the constitutional right to travel. Petitioner's arguments in this respect, however, are neither properly before the Court nor consistent with the Court's precedents.

A. Petitioner Lacks Standing To Raise The Right-To-Travel Claim.

One of the few relative certainties in an otherwise "uncertain jurisprudence," *Zobel v. Williams*, 457 U.S. 55,

73 (1982) (O'Connor, J., concurring in the judgment), is that the right to travel found in the Constitution is limited to *interstate* travel. Although the origin or scope of the right to travel has sometimes been the subject of disagreement, the Court consistently has recognized that the Constitution's concern is with the migration of persons *across state lines*.³³

Although petitioner argues that California's acquisition value tax penalizes interstate travel, petitioner does *not* claim that she is among those "newcomers" to California whose migratory rights have allegedly been burdened. To the contrary, the record reflects only that petitioner purchased her property in 1988 "after living in rental property for 25 years and saving her money." Pet. App. A4. Petitioner is thus asserting a hypothetical constitutional injury that she has not suffered and, in fact, has no interest in raising.

Petitioner's right-to-travel claim plainly contravenes the rule that "one may not claim standing in this Court to vindicate the constitutional rights of some third party." *Barrows v. Jackson*, 346 U.S. 249, 255 (1953); see also *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166 (1972) (a plaintiff "has standing to seek redress for injuries done to him, but may not seek redress for injuries done to others"). Although the rule is a prudential one and may be overcome "[w]here practical obsta-

³³ See, e.g., *Attorney General v. Soto-Lopez*, 476 U.S. 898, 902 (1986) (plurality opinion) (defining "the constitutional right to travel" as, "more precisely, the right of free interstate migration"); *id.* at 920 (O'Connor, J., dissenting) (defining right to travel as "the fundamental right to settle in another State"); *Zobel v. Williams*, 457 U.S. 55, 60 n.6 (1982) (identifying "[t]he right to travel and to move from one state to another"); *id.* at 66 & n.1 (Brennan, J., concurring) (recognizing that the Constitution's protection of travel springs from "the national interest in a fluid system of interstate movement") (emphasis in original); *Shapiro v. Thompson*, 394 U.S. 618, 630 (1969) ("this right to travel interstate").

cles prevent a [third] party from asserting rights on behalf of itself," *Secretary of State v. Joseph H. Munson Co.*, 467 U.S. 947, 956 (1984),³⁴ it is clear in this case that persons who recently migrated to California or who have concrete plans to do so are perfectly capable of asserting their own constitutional rights. Because petitioner's own interests in interstate travel are wholly unaffected by the California acquisition value tax and because those who *have* migrated recently to California are capable of asserting their own constitutional rights, petitioner lacks standing to bring her right-to-travel challenge.

B. California's Acquisition Value Tax, Which Draws No Distinctions Based On Residency And Which Treats All California Property Owners Alike, Does Not Infringe The Right To Travel.

Even if this Court were to reach the right-to-travel argument, it is plain that any incidental burden on interstate migration that might be created by California's acquisition value tax falls far short of what is necessary to trigger heightened constitutional scrutiny.³⁵

"A state law implicates the right to travel when it actually deters such travel, when impeding travel is its primary objective, or when it uses 'any classification

³⁴ For example, in *Barrows* the Court "reaffirm[ed]" its allegiance to the "rule denying standing to raise another's rights," but went on to hold that the rule should yield in the "unique situation" there presented because "it would be difficult if not impossible for the persons whose rights are asserted to present their grievance before any court." 346 U.S. at 257.

³⁵ Because "the constitutional right to travel from one State to another" is a fundamental right, *Shapiro*, 394 U.S. at 630 (quoting *United States v. Guest*, 383 U.S. 745, 757 (1966)), state classifications that erect a meaningful barrier to interstate migration must survive heightened scrutiny under the Equal Protection Clause, *id.* at 634.

which serves to penalize the exercise of that right.'” *Attorney General v. Soto-Lopez*, 476 U.S. 898, 903 (1986) (plurality opinion) (citations omitted). Because petitioner has offered no basis upon which a court could infer that California’s acquisition value tax was intended to deter migration or actually has deterred migration, the determinative question is whether California’s tax on the acquisition value of property “operates to penalize those persons . . . who have exercised their constitutional right of interstate migration.” *Id.* at 905 (internal quotation marks omitted). In answering that question, it is not sufficient for petitioner to show that California’s tax has merely “a negligible or minimal impact on the right to travel.” *Id.* at 921 (O’Connor, J., dissenting).³⁶ In fact, however, California’s acquisition value tax poses no threat to free interstate migration and therefore, under the cases in which this Court has found an impermissible burden on the right to travel, the tax is not unconstitutional.

In recent years, this Court has found the right to travel implicated in two broad categories of cases. First, the Court has struck down laws that “deny[] newcomers ‘basic necessities of life’” or citizenship. *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 269 (1974). Thus, the Court has held that durational residency requirements that withhold from migrants, even temporarily, basic welfare benefits, see *Shapiro v. Thompson*, 394 U.S. 618 (1969), state-sponsored health care, see *Memorial Hosp.*, 415 U.S. 250, or the right to vote, see *Dunn v. Blumstein*, 405 U.S. 330 (1972), erect real barriers to interstate travel which must withstand strict scrutiny.

³⁶ See also *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 285 (1974) (Rehnquist, J., dissenting) (“the Court should examine, as it has done in the past, whether the challenged [state action] erects a real and purposeful barrier to movement, or the threat of such a barrier, or whether the effects on travel, viewed realistically, are merely incidental and remote”).

Second, the Court has struck down “state laws that create[] permanent distinctions among residents based on the length or timing of their residence.” *Soto-Lopez*, 476 U.S. at 907 (plurality opinion). In *Zobel v. Williams*, 457 U.S. 55 (1982), for example, the Court held unconstitutional an Alaska law that authorized cash payments to Alaska residents in varying amounts depending upon the number of years they had been residents of the State. Similarly, in *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), and *Soto-Lopez* the Court struck down laws that granted benefits to certain veterans residing in the State depending upon whether they had established residency at some fixed point in the past. In all three cases, the Court found that the laws offended the Constitution because they “create[d] ‘fixed, permanent distinctions between . . . classes of concededly bona fide residents’ based on when they arrived in the State.” *Hooper*, 472 U.S. at 617 (quoting *Zobel*, 457 U.S. at 59); see also *Soto-Lopez*, 476 U.S. at 908-09 (plurality opinion).³⁷

By denying significant benefits to certain state residents based solely upon their later arrival, the laws imposed a brand of “second-class citizens[hip]” on more recent migrants—a status from which they could never escape. See *Hooper*, 472 U.S. at 623; see also *id.* at 623 n.1 (the Equal Protection Clause does not countenance “‘degrees of citizenship based on length of residence’”) (quoting *Zobel*, 457 U.S. at 69 (Brennan, J., concurring)). As Justice O’Connor explained in *Zobel*:

³⁷ In none of these cases did the Court hold that the state laws violated the right to travel; rather, in *Zobel* and *Hooper* the laws were struck down as failing even the rational basis test, and in *Soto-Lopez* only a plurality found the right to travel burdened. Most members of the Court have agreed, however, that the Court’s holdings in each case were driven in part by the conclusion that the right to travel was implicated by the States’ explicit differentiation between newer and older residents. See, e.g., *Soto-Lopez*, 476 U.S. at 907-08 (plurality opinion of Brennan, J.); *id.* at 919-20 (O’Connor, J., dissenting); see also *Zobel v. Williams*, 457 U.S. 55, 72-73 (1982) (O’Connor, J., concurring in the judgment).

[Through its law, the State] forces nonresidents settling in the State to accept a status inferior to that of oldtimers. . . . In effect, . . . the State told its citizens: "Your status depends upon the date on which you established residence here. Those of you who migrated to the State cannot share its bounty on the same basis as those who were here before you."

Zobel, 457 U.S. at 74-75 (O'Connor, J., concurring in the judgment). The most striking characteristic of all of the laws struck down in both categories of cases, from *Shapiro* through *Soto-Lopez*, is that they drew express "state distinctions between newcomers and longer term residents" turning solely on length or timing of residency. *Hooper*, 472 U.S. at 618 n.6 (quoting *Zobel*, 457 U.S. at 60 n.6). The Constitution, founded in part upon a "national interest in a fluid system of free interstate movement," *Zobel*, 457 U.S. at 66 n.1 (Brennan, J., concurring) (emphasis omitted), simply will not tolerate the creation of two tiers of residents or citizens.

California's tax on the acquisition value of property bears none of the earmarks of those state laws that have been held to offend the right to travel. California's tax does *not* differentiate between recent migrants and longtime residents. Indeed, petitioner concedes as much, but argues that "[l]ength of home[.]ownership is a sufficiently close proxy to length of residency." Pet. Br. 44. This assertion is supported by nothing in the record and is counterintuitive. Purchasers of California real estate are taxed upon the price they pay for their property, regardless of whether they have recently moved to the State or have lived there all their lives. The benefits of longtime ownership are available to nonresidents as well as residents, and the tax burden associated with later purchase in an inflationary market falls evenly upon

the purchaser from out of state and the purchaser from across town.³⁸

Even if there were some statistical relationship between higher property taxes and length of residency, Article XIII A imposes the sort of general, nondiscriminatory burden that this Court suggested in *Dunn v. Blumstein*, 405 U.S. 330 (1972), would not infringe the constitutional right to travel. There, the Court emphasized that explicit "[d]uration of residence laws impermissibly condition and penalize the right to travel by imposing their prohibitions on *only* those persons who have recently exercised that right." 405 U.S. at 342 (emphasis added). The Court contrasted the situation where,

for example, an interstate migrant loses his driver's license because the new State has a higher age requirement [I]n such a case, the new State's age requirement is not a *penalty* imposed solely because the newcomer is a new resident; instead, all residents, old and new, must be of a prescribed age to drive.

Id. at 342 n.12 (emphasis in original).

³⁸ This Court has never found that a non-residency-based "criterion chosen by a state for classifying taxpayers is a close enough proxy for out-of-state residency to be subject to the same constitutional doctrines that involve residency." Pet. Br. 45. The Court's rulings in *Memorial Hospital and United Building & Construction Trades Council v. Mayor of Camden*, 465 U.S. 208 (1984) (involving the Privileges and Immunities Clause of Art. IV), relied upon by petitioner for this contention, struck down explicit local residency requirements that excluded or penalized out-of-state residents or migrants. The fact that the local residency requirements in those cases also penalized some in-state residents living outside the locality could not save them from invalidation, given that the laws had the effect of excluding absolutely those living outside the State based solely on their status as nonresidents. See, e.g., *United Bldg. & Constr. Trades*, 465 U.S. at 216-17 ("A person who is not residing in a given State is *ipso facto* not residing in a city within the State. Thus, whether the exercise of a privilege is conditioned on State residency or on municipal residency he will just as surely be excluded").

In this case, as in the driver's license hypothetical in *Dunn*, the residency status of the taxpayer—past or present, long-term or short-term—is utterly irrelevant in the calculation of the burden. If petitioner's property taxes are higher than those of her neighbors, that is not because of the date upon which she became a California resident, but because she paid more for her house. Indeed, a migrant who established residency in California and bought a home there six months ago may well enjoy a somewhat lower property tax bill than his or her neighbor who, although a life-long Californian, moved to the neighborhood and purchased a comparable home last week.

Finally, contrary to petitioner's assertion, the relative tax burdens of California homeowners are not "fixed" or "permanent" as were the classifications at issue in *Zobel*, *Hooper*, and *Soto-Lopez*. Rather, the relative burdens will be continually adjusted and reassigned with the regular turnover of the real estate market. Under these circumstances, there is clearly no danger that California's tax on the acquisition value of property will carry with it an expression to new residents that they have "a less valuable citizenship right" than pre-established residents, *Zobel*, 457 U.S. at 75 (O'Connor, J., concurring in the judgment), nor will it even remotely "identify[]" recent migrants "as in a sense 'second-class citizens,'" *Hooper*, 472 U.S. at 623.

Because the California acquisition value tax draws no "distinctions among residents based on the length or timing of their residence," *Soto-Lopez*, 476 U.S. at 907 (plurality opinion), and imposes no brand of inferior status upon recent migrants, it does not "operate[] to penalize those persons . . . who have exercised their constitutional right of interstate migration." *Id.* at 905 (internal quotation marks omitted). Accordingly, the California tax does not warrant the invocation of heightened constitutional

scrutiny and must be upheld as rationally related to its legitimate governmental objectives.³⁹

* * * * *

Respondents acknowledge that, in an inflationary real estate market, owners of properties with identical market values can have significantly different tax bills under an acquisition value tax scheme. It is equally true in an inflationary real estate market where there is no acquisition value tax scheme that homeowners, through no fault of their own, can find themselves without the financial resources to maintain their homes or other necessities of life. As this Court stated in *San Antonio Independent School District v. Rodriguez*, "[n]o scheme of taxation, whether the tax is imposed on property, income, or purchasers of goods and services, has yet been devised, which is free of all discriminatory impact." 411 U.S. at 40. The real question, therefore, is whether the balancing of the

³⁹ It is equally obvious that Article XIII A does not infringe the right to travel if that right is conceived of as emanating from the Privileges and Immunities Clause of Article IV. See, e.g., *Zobel*, 457 U.S. at 73-74 (O'Connor, J., concurring in the judgment). Article IV, § 2, provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1. The Clause requires that "with respect to those 'privileges' and 'immunities' bearing on the vitality of the Nation as a single entity,' . . . a State must accord residents and nonresidents equal treatment." *Supreme Court v. Piper*, 470 U.S. 274, 279 (1985) (quoting *Baldwin v. Fish & Game Comm'n*, 436 U.S. 371, 383 (1978)). In short, the Clause "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer v. Witsell*, 334 U.S. 385, 395 (1948); see also *Zobel*, 457 U.S. at 74 (O'Connor, J., concurring in the judgment). From this, it is apparent that California's acquisition value tax does not offend any right to travel rooted in the Privileges and Immunities Clause. Although the right to acquire real property is undoubtedly one of the "privileges" of citizenship protected by the Clause, see *Piper*, 470 U.S. at 281 n.10, it is equally clear that California does not differentiate between residents and nonresidents in its taxation of property.

appropriate benefits and burdens of competing tax schemes should be constitutionalized or is properly left to each individual State to adjust according to its own needs. In *Rodriguez*, this Court recognized the wisdom of applying the rational basis test “[i]n such a complex area in which no perfect alternatives exist.” *Id.* Under that well-established standard, a State’s methods of taxation need only be rationally related to a legitimate state purpose, and it is plain beyond doubt that California’s acquisition value tax passes constitutional scrutiny under that standard.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

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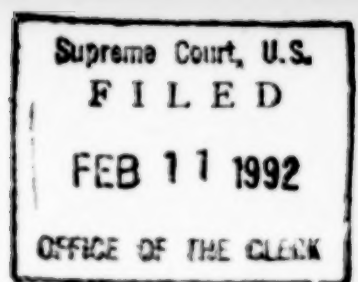
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In the Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

v.

Petitioner,

KENNETH HAHN, in his capacity as
Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,

Respondents.

REPLY BRIEF OF PETITIONER

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REPLY BRIEF OF PETITIONERS

Respondents do not dispute that the Webster County welcome stranger property tax assessment method struck down in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989) operates identically to Proposition 13's assessment provisions. Resp. Br. at 38. Nor do they dispute that Proposition 13's welcome stranger provision has resulted in gross disparities in the taxes assessed on properties of comparable value. Resp. Br. at 8, 47. These disparities are so indisputable that the court below took judicial notice of them (Pet. App. A12), and, just last month, the California Supreme Court described Proposition 13's assessment method as a "wild card" system that creates "substantial inequalities" now reaching 20 to 1 in Los Angeles County. *Southern California Rapid Transit District v. Bolen*, No. S015986, 1992 W.L. 14315, at *22 n.8 (Cal., Jan. 30, 1992). As respondents acknowledge, the "crucial" question remaining in this case is whether California's formal embodiment of the discriminatory policy into state law transforms an otherwise unconstitutional practice into one that is constitutional. Resp. Br. at 38.

On this admittedly "crucial" question, respondents offer an interpretation of *Allegheny* that patently conflicts with the decisions of this Court cited in Petitioner's Opening Brief — *cases whose existence respondents do not even acknowledge*. These cases hold that it does not matter whether a discriminatory governmental classification is established by state law or by administrative practice even when that practice is in defiance of state law. The only question is whether the classification is *rational*, irrespective of state law. The welcome stranger assessment method struck down in *Allegheny* failed to meet the rational basis test. 488 U.S., at 344-45. Respondents do not suggest that *Allegheny* was wrongly decided. Proposition 13's functionally identical and equally discriminatory assessment method must suffer the same fate.

I.

**THE FORMAL EMBODIMENT OF A
WELCOME STRANGER PROPERTY TAX
ASSESSMENT SCHEME INTO STATE
LAW DOES NOT SAVE IT FROM
CONSTITUTIONAL DEFECT.**

Respondents attempt to distinguish *Allegheny* by asserting that the Webster County assessor was "limited to justifying the State's assessment practices with reference to West Virginia's objective of taxing property based on current market value." Resp. Br. at 38. Accordingly, respondents contend that the assessor there could not offer several of the justifications urged by respondents, who are defending the same welcome stranger taxation method in a state that has formally adopted it as state law. *Id.*¹ Respondents' contentions flatly contradict this Court's long-standing precedents, as well as a host of circuit court decisions.

In both *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362 (1940) and *Snowden v. Hughes*, 321 U.S. 1 (1944), the Court made clear that the Federal Equal Protection Clause applies in the same manner whether the challenged discriminatory classification is formally adopted by state law or is administratively adopted in violation of state law or policy. Applying the rational basis test, the Court in *Snowden* thus stated:

the action of [an administrative] Board is ...
subject to constitutional infirmity to the
same but no greater extent than if the action

¹ Respondents do acknowledge, however, that the Webster County assessor and supporting *amici* raised many of the same arguments before the Court in support of the welcome stranger practice that respondents make here. Resp. Br. at 37 n.31.

were taken by the state legislature. Its illegality under the state statute can neither add to nor subtract from its constitutional validity.

321 U.S., at 11.

In both *Browning* and *Snowden*, the challenged classifications imposed by administrators contravened state law.² According to respondents' reasoning, both actions should have been found unconstitutional because the defenders of the actions should have been limited to justifications that comported with state law or policy. The Court, however, upheld the classifications despite the conflict with state law and policy — and specifically rejected the position advanced by respondents here. As these cases clearly indicate, the only issue facing a court in determining the validity of a discriminatory classification scheme under the Equal Protection Clause is whether, had the classification actually been official state law or policy, it had a rational basis. See *Browning*, 310 U.S., at 369; *Snowden*, 321 U.S., at 11.

If *Allegheny* really means what respondents say it does, it dramatically expands the reach of the Equal Protection Clause. An aggrieved plaintiff could challenge as a federal equal protection violation any intentional and systematic violation of state law by a state or local official. Even more disturbing, under respondents' expansive analysis, a cause of action would exist whenever a litigant

² In *Browning*, the State of Tennessee, like West Virginia, required the uniform taxation of all property at current market value but assessors routinely assessed railroad property higher than all other property. 310 U.S., at 369, 371. In *Snowden*, the elections board refused to include the plaintiff's name on the general election ballot even though he clearly qualified for inclusion under state law. 321 U.S., at 2-4.

could demonstrate that the challenged action violated state policy, even in the face of a state court decision holding that the state or local official did not violate state law. This is precisely the argument respondents advance here to explain *Allegheny*, since, as respondents concede, the West Virginia Supreme Court upheld the Webster County assessor's actions as consistent with state law. Resp. Br. at 38 n.32. Thus, federal courts would find themselves determining not only whether a state or local official violated state law, but how far that official strayed from state policy.

This is not a merely hypothetical concern. At least three circuits have recently confronted the question whether a violation of state law necessarily gives rise to a federal constitutional violation. Each circuit has rejected the theory respondents advance to distinguish *Allegheny*, holding instead that a discriminatory classification imposed in violation of state law does not violate the Constitution unless otherwise irrational. See *Hoffman v. City of Warwick*, 909 F.2d 608 (1st Cir. 1990); *Archie v. City of Racine*, 847 F.2d 1211 (7th Cir. 1988) (*en banc*), *cert. denied*, 489 U.S. 1065 (1989); *Muckway v. Craft*, 789 F.2d 517 (7th Cir. 1986); *Stern v. Tarrant County Hosp. Dist.*, 778 F.2d 1052 (5th Cir. 1985) (*en banc*), *cert. denied*, 476 U.S. 1108 (1986).

Moreover, it is easy to imagine situations that could lead to new federal constitutional claims. For example, in a state that prohibits age discrimination, a local recreation district might adopt a weekly adults-only pool day at its public pools. A claimant could challenge the recreation district policy under the Federal Equal Protection Clause. Under respondents' theory, the district would be precluded from offering any justifications for its policy that conflict with the state's policy against age-based distinctions. This would be true even if a state court had already concluded

that the local official's classification was permissible under state law.

II.

RESPONDENTS' DIFFICULTY IN DESCRIBING PROPOSITION 13'S CLASSIFICATIONS ILLUSTRATES THE LACK OF RATIONAL BASIS FOR THE MEASURE'S GROSSLY DISCRIMINATORY EFFECTS.

In order to determine whether a taxation method is rationally based, "it must appear not only that a classification has been made, but that it is one based on some reasonable ground." *Colgate v. Harvey*, 296 U.S. 404, 423 (1935). Yet respondents cannot even ascertain or consistently describe the classifications Proposition 13 creates, let alone why the classes have distinguishing characteristics. They have fundamentally changed their view of the nature of the classification from the position they took in the courts below.

Previously, respondents argued that Proposition 13 establishes a new class every day, so that everyone who entered the real estate market and bought property on a given day, no matter what type or how expensive, is in the same class. *Nordlinger v. Lynch*, Brief of Respondents, filed with the California Court of Appeal, at 10. Without even acknowledging this former description, respondents now assert that "all taxpayers whose property has the same acquisition value" are in the same class. Resp. Br. at 33.

If respondents cannot even consistently define the classes of taxpayers that Proposition 13 creates, how can they identify the distinguishing characteristics of the various classes that justify differential treatment? See *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 453 (1985) (Stevens, J. concurring) ("What is the

characteristic of the *disadvantaged class* that justifies the disparate treatment?") (emphasis supplied).

Under respondents' *prior* view of Proposition 13's classifications, more than 5,000 classes exist to date, with the last-created classes assessed at current market value and each earlier class assessed at increasingly obsolete historical values. Respondents now attempt to avoid this characterization, perhaps because it so closely resembles the prohibited "fixed, permanent distinctions between an ever-increasing number of perpetual classes" this Court invalidated in *Zobel v. Williams*, 457 U.S. 55, 59 (1982). As the "class-a-day" description highlights, later purchasing property owners can never break into the most favored earlier purchasing classes.

Under respondents' *new* view, taxpayers are "similarly situated" whenever they share the same acquisition value — no matter when they acquired the property; no matter whether the property is developed or undeveloped, commercial or residential; no matter whether, if residential, the property is a mansion or a bungalow; and no matter that one class member may have spent 1975 dollars to buy the property while another spent the same amount in much less valuable 1989 dollars. Thus, the owners of the Beverly Hills mansion and the Venice bungalow pictured at page 6 of Petitioner's Opening Brief are, under respondents' view, legislatively deemed "similarly situated" and treated with "full equality" by Proposition 13 for all relevant tax purposes. This is apparently because they share the happenstance of having paid, across the span of more than a decade, the same purchase price, and hence share roughly the same nominal acquisition value (approximately \$300,000). J.A. 52-53. This class also apparently includes all owners of commercial property with the same \$300,000 acquisition

value, no matter what the current market value or current income stream.

Thus, respondents essentially argue that the legislature by fiat has simply declared that all property owners, who at various points in time purchased various types of property (with wildly varying current market values and/or income streams), are arbitrarily deemed to be "similarly situated" if they paid the same purchase price. This Court has firmly rejected such a semantic sleight-of-hand: "[a] State cannot deflect an equal protection challenge by observing that in light of the statutory classification all those within the burdened class are similarly situated. The classification must reflect pre-existing differences...." *Williams v. Vermont*, 472 U.S. 14, 27 (1985).

Any system that deems the Venice bungalow, the Beverly Hills mansion, and an income-generating apartment building "similarly situated" and subject to the same taxes simply because of the fortuity of "acquisition value" surely deserves the "wild card" epithet the California Supreme Court so aptly gave it. See *Southern California Rapid Transit District v. Bolen*, *supra*, *22 n.8.

III.

A HOST OF ALTERNATIVE TAX SYSTEMS, INCLUDING AN AD VALOREM TAX SYSTEM BASED ON CURRENT MARKET VALUES, ARE RATIONALLY BASED.

Respondents claim that petitioner's argument is based on the premise that "current market value provides the only legitimate basis for taxation." Resp. Br. at 14. This is not her position. She argues simply that, as this Court unanimously determined only three years ago in *Allegheny*, it is irrational to have a property tax system that creates massive disparities between new buyers, whose property is

taxed at current market value, and long-time owners, whose property is taxed at increasingly obsolete acquisition values that have no connection to current circumstances. Cases relied on by respondents such as *Ohio Oil Co. v. Conway*, 281 U.S. 146 (1930) and *Bell's Gap R. Co. v. Pennsylvania*, 134 U.S. 232 (1890) in no way undermine petitioner's position.

Quantity-based taxes like those upheld in *Ohio Oil*, and traditional ad valorem taxes assessed on current market values (used in all states that levy a property tax except California),³ are rational because they compare taxpayers by using external characteristics with current relevance to the taxes imposed. It is rational, for example, to assume that an oil field that produces 1000 barrels of oil per day is more valuable and should be taxed more than a field that generates 100 barrels. Indeed, any number of quantity-based property tax systems, including ones based on acreage of a lot or square footage of a building, would, like the *Ohio Oil* per-barrel tax, be reasonable ways to determine taxes. Such quantity-based taxes, unlike Proposition 13, do not provide favorable treatment only to those most privileged taxpayers who happen to have the good fortune to buy their property first.⁴

³ Respondents suggest that the "taxing schemes of 17 other States [may also be] constitutionally suspect" because, as noted by *amicus* International Association of Assessing Officers, California's coefficient of dispersion (the measure of the deviation of assessments from market value) ranks 33rd. Resp. Br. at 29 n.26. Respondents neglect to point out that IAAO expressly noted that California ranked 33rd in 1981, just three years after Proposition 13 was enacted. As the 1990 census data doubtless will show, eleven years later California ranks at the bottom.

⁴ In contrast to the welcome stranger taxation method, the scheme in *Bell's Gap* was rational. There, Pennsylvania taxed *all* bonds at par value, regardless of their actual value. It did not, for example, impose a recurring annual tax at one rate for original purchasers of bonds at par value and at far higher effective rates for all subsequent purchasers based on market value at time of purchase. Had California chosen one base year (e.g., 1975) and taxed all property owners based on that year,

Similarly, although petitioner does not contend that an ad valorem tax system based on current market values is the *only* rational system of property taxation, it is, nevertheless, rational to assume that two properties currently valued by the market at, say, \$300,000 are alike because their owners could normally trade one for the other. Consequently, it is rational to tax them equally. That system rationally also assumes that a property with a high market value should be taxed more than a property of a lower value because the owner of the higher valued property has greater wealth. An ad valorem system based on current market values further reasonably assumes that higher valued properties should be taxed more because public services contribute to those higher values.

By contrast, it is not rational to superimpose on this otherwise rational ad valorem system an assessment cap that uses the happenstance of purchase price at a particular moment to freeze forever that property's tax assessment. To do so in both *Allegheny* and here, results over time in taxing favored property owners at artificially low, out-of-date values that grossly diverge from the far higher current market values on which recent buyers of comparable properties are taxed. The ensuing "wild card" classifications treat a mansion, a bungalow, and an office building as if they were the same, regardless of current market value or income stream, simply because each was once purchased for the same price. The ad valorem tax system based on current market values recognizes the obvious differences in these properties; Proposition 13 pretends they do not exist.

⁴(...continued)

the analogy to *Bell's Gap* might be more apt. Nevertheless, such a tax on real property, which appreciates and depreciates at different rates depending upon its location and type (e.g., commercial or residential), could raise constitutional concerns by failing to meet *Allegheny's* requirement of the "seasonable attainment of a rough equality." 488 U.S., at 343, a problem not presented in the taxation of bonds.

Respondents further melodramatically allege that petitioner's view would "jeopardize the constitutionality of every provision in the federal and state tax codes that furthers any policy other than" a current market value tax system. Br. at 14.⁵ But in concluding that the Webster County method did not meet even the most minimal scrutiny, the Court in *Allegheny* expressly acknowledged and distinguished a host of cases in which state and local governments had established legitimate and justifiable tax classification schemes. Such classification schemes continue to be evaluated under the same equal protection standards that have governed this area of the law for more than 50 years.

IV.

PROPOSITION 13, LIKE THE WEBSTER COUNTY WELCOME STRANGER TAX ASSESSMENT METHOD STRUCK DOWN IN ALLEGHENY, LACKS A RATIONAL BASIS.

Much of the rhetoric in respondents' brief is aimed at the supposed evils of the traditional ad valorem system used in California just prior to Proposition 13's adoption, as though the only alternatives for California are the pre- and post-Proposition 13 systems. Respondents fail to mention the single most significant cause of the pre-Proposition 13 difficulties: despite the dramatic rise in property values, local officials *failed to reduce the tax rates*. Higher property values and corresponding higher assessments result in higher taxes only if the tax rate remains constant. If some

⁵ Respondents' suggestion that the taxation of capital gains at the time of sale is similar to Proposition 13 (Resp. Br. at 18 n.13) is particularly ironic. Under capital gains taxation, the seller ultimately pays taxes on any gain he or she experiences, in stark contrast to Proposition 13. Moreover, the person with the largest gain pays the highest tax on sale. Perversely, under Proposition 13, the taxpayer who experiences the largest gain in the value of his or her property pays the lowest effective tax rate, year in and year out.

taxpayers found themselves "taxed out of their homes" or squeezed by the failure of local officials to reduce taxes, the voters could have targeted tax relief to those actually in need, insisted that tax rates vary in inverse proportion to increases in property values, or even voted the rascals out of office.⁶ Instead, they took the politically expedient option of shifting the increases in their future tax burdens to newcomers.⁷

⁶ Petitioner does not claim that these alternatives are simply "wiser" than Proposition 13. The alternatives merely demonstrate that Proposition 13 was a most unnecessary means of pursuing the State's limited goals.

⁷ California did, in fact, impose a revenue limitation on local governments two years after Proposition 13 passed, known as the "Gann limit." Cal. Const. art. XIII B. This limit freezes local government spending per capita at 1979 levels, adjusted for inflation. Thus the assertion by *amicus* Howard Jarvis Taxpayers Foundation that a decision striking down Proposition 13 would immediately increase taxes by tens of billions of dollars statewide is simply wrong. Br. at 11. Los Angeles County, for example, is so close to its Gann limit that if revenue from property taxes were to rise just 7% from current levels it would reach its limit. See State Controller, *Annual Report of Financial Transactions Concerning Counties of California*, FY 1989-90, at 134; 1991 Roll Release, Los Angeles County Assessor, at 7. See also Los Angeles County, *Budget-in-Brief*, 1990-91, at 13. If all County property were assessed at market value, the property tax rate would have to fall to less than half of the current 1% to stay within the Gann limit. As petitioner noted in her opening brief, a revenue neutral residential property tax rate for Los Angeles County (one that would bring in the same amount of revenue as the current system while assessing all property at its current market value) would be 0.44%. Pet. Br. at 35. Because of the Gann limit, this rate could not rise any higher than 0.47% (0.44% multiplied by 1.07).

**A. As Out-of-Date Acquisition Values
Grossly Diverge From Current
Market Value, They Bear No Rational
Connection to Ability to Pay.**

This Court in *Allegheny* stated that “the fairness of one’s allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings.” 488 U.S., at 346. Respondents ignore this directive. They instead attempt to mask the inherent irrationality of a welcome stranger taxation method by shifting attention away from the gross disparities Proposition 13 creates among similarly situated property owners. Respondents in effect say to new buyers: as long as you can pay your taxes, the very low taxes of those who are similarly situated to you are of no concern to you. See Resp. Br. at 19 (suggesting that whether vast numbers of taxpayers are significantly underpaying taxes is not relevant to whether Proposition 13 is rationally based).

Respondents then defend Proposition 13’s enormous inequities by suggesting that they prevent homeowners from either being taxed out of their homes or being forced to spend too much on taxes and not enough on necessities. Resp. Br. at 17. But to assume that obsolete historical values 10, 15, 20, and eventually 50 or 100 years out of date relate in any way to what a taxpayer (and his or her descendants) presently can or cannot afford to pay in taxes is a legal fiction.

If the rational basis test is to mean anything, a tax assessment system cannot scatter its benefits and burdens so randomly and so arbitrarily in the name of protecting a very small group of homeowners on fixed incomes. According to respondents’ asserted justification, the system bestows its greatest benefits on long-time owners of commercial property, the value of which is dependent upon its ability to generate income, and on long-time owners of Beverly Hills mansions, all in the name of preventing impoverished

homeowners from starving rather than paying their fair share of taxes.⁸ In light of the massive disparities Proposition 13 creates, “the choice of a proxy criterion ... cannot be so casual as this, particularly when a more precise and direct classification is easily drawn.” *Williams v. Vermont*, 472 U.S., at 24 n.8. Were ability to pay the true concern of its authors, they would have targeted relief based on some pre-existing difference among property owners, such as those with the least wealth, the lowest income, or the greatest need.

No mechanism in Proposition 13 exists to achieve the constitutional requirement of the “seasonable attainment of a rough equality in tax treatment among similarly situated property owners.” *Allegheny*, 488 U.S., at 343. Like the Webster County welcome stranger method struck down in *Allegheny*, Proposition 13 now indisputably creates “gross disparities” in the taxes paid by long-time owners and recent buyers of comparable properties. Pet. App. A12. As acquisition values stray further and further from current circumstances and these “gross disparities” become

⁸ Respondents’ use of the word “efficient” to describe Proposition 13’s effects (Br. at 21 n.17) seems especially contrived. A property tax system that distorts market forces and creates anti-competitive business effects by taxing recent and longtime property-owning competitors at vastly different levels can hardly be labelled “efficient.” Nor can a taxing system with the anti-mobility effects of Proposition 13 — which traps homeowners in their present homes in order to avoid the huge tax penalties caused by moving — be described in any meaningful way as “efficient.”

Amici Washington Legal Foundation, *et al.* concede that “[d]ifferent considerations may be involved in the case of business properties that generate revenue.” (Br. at 11 n.3) but claim that issue is not before the Court. They are incorrect. Petitioner has challenged Proposition 13’s assessment provisions — which do not distinguish between residential and commercial properties — in their entirety. J.A. 2, 56. Her high taxes are subsidizing both long-time commercial and long-time residential property owners.

manifest, any link between ability to pay (based on the original purchase price of property) and taxes presently assessed and payable becomes so attenuated and irrational as to require constitutional intervention.

B. Respondents Concede That Certainty Cannot Justify an Otherwise Irrational Tax Method.

Respondents do not contend that certainty in and of itself is a sufficient basis to sustain Proposition 13 as rational. Instead, they argue that taxpayers can predict with certainty the amount a "taxpayer has the ability and income to pay...." Resp. Br. at 23. This argument is nothing more than a rephrasing of their first argument, namely that an acquisition value tax system reasonably measures a taxpayer's ability to pay.

C. Respondents Attempt to Camouflage Proposition 13's True Purpose: to Place the Burden of Financing Increased Government Spending in Inflationary Times Entirely on Newcomers and New Buyers.

The sponsors of Proposition 13 candidly acknowledge that they designed the reassessment-upon-transfer provision of Proposition 13 in order to provide local governments with ever-increasing tax revenues — exclusively from new buyers — even while the taxes of longtime property owners remain low. See *Amicus Curiae* Brief of Howard Jarvis Taxpayers Ass'n, *et al.*, at 8-9, 15, 26. The Jarvis/Gann groups thus proudly claim that the massive disparities created by Proposition 13, combined with the \$1.2 billion increase in taxes post-Proposition 13 buyers have had to pay, are the expected consequences of their scheme: Proposition 13 is working "precisely as ... intended." Br. at 8.

The argument that Proposition 13's reassessment-on-transfer provision was designed specifically to provide local governments with *increasing* revenues during long-term

inflationary periods was made both to the court below and to the court of appeal in the related *R.H. Macy* case.⁹ The *R.H. Macy* court explained that "assurance of a stable revenue source for the local governments" was one of Proposition 13's purposes. *R.H. Macy*, 226 Cal.App.3d, at 360 n.2, 276 Cal.Rptr., at 535 n.2.

Respondents now offer a new "stable revenue source" justification, never before articulated, apparently seeking to camouflage this stark reality: the State's politically dominant longtime property owners successfully used Proposition 13 to keep their taxes low, while forcing newcomers to pay for increasingly higher taxes to maintain a high level of government services.¹⁰ By twisting the "stable source of local revenue" explanation to mean something entirely different, respondents would have us believe that, after all their talk about the need to protect property owners from the effects of *inflation*, the drafters of

⁹ *Nordlinger v. Lynch*, Brief of Howard Jarvis Taxpayers Ass'n, *et al.* as *Amici Curiae* in Support of Respondent, filed with the California Court of Appeal, at 6, 7-8, 39. See also Brief of Howard Jarvis Taxpayers Ass'n as *Amicus Curiae* in *R.H. Macy & Co., Inc. v. Contra Costa County*, 226 Cal.App.3d 352, 276 Cal.Rptr. 530 (1990), *cert. granted*, 111 S.Ct. 2256 (1991), *cert. dismissed*, 111 S.Ct. 2923 (1991).

¹⁰ Respondents' argument that new buyers will not pay increasingly high taxes because Proposition 13's discrimination is mitigated by being capitalized into sales prices is simply erroneous. Resp. Br. at 25. Consider two homeowners, A and B, who live in houses of equal current market value. Homeowner A purchased his property before 1975, and has enjoyed low tax rates ever since. Homeowner B, like petitioner Nordlinger, purchased her property a few years ago, and has paid high taxes. According to respondents' argument, this discrimination should be redressed upon the sale of the properties. But this discriminatory treatment would only be mitigated if the long-time owner, who has long enjoyed low taxes, is unable to sell his home for as high a price as the highly taxed Homeowner B. By the same token, if Purchaser C intends to remain in the same home for the rest of his life, and Purchaser D expects to move in a few years, Purchaser C

Proposition 13 intended to protect local governments from the ravages of *deflation* and recession. By vastly underassessing long-held properties, respondents now argue, Proposition 13 guarantees that, in times of deflation, local governments will not have to reduce the assessments of long-held property even further (and lose expected revenues). Of course, this argument ignores the government's ability to maintain revenues under a traditional ad valorem system simply by raising the tax rate in an even-handed, non-discriminatory manner.

V.

**PROPOSITION 13 IMPERMISSIBLY
BURDENS THE RIGHT TO TRAVEL AND
SHOULD BE SUBJECT TO HEIGHTENED
JUDICIAL SCRUTINY.**

**A. Petitioner May Properly Raise the
Question of the Level of Scrutiny to
Which Proposition 13 Should Be
Subject.**

Respondents concede that petitioner satisfies the jurisdictional "case" or "controversy" requirement of Article III of the United States Constitution. Resp. Br. at 40. She has alleged injury from Proposition 13's inequitable taxation scheme and, if Proposition 13 is held invalid, her property taxes will be affected. Respondents claim, however, that because petitioner is not among "those 'newcomers' to California whose migratory rights have

¹⁰(...continued)

hopes some day to be a beneficiary of the welcome stranger policy, while Purchaser D is nothing but a victim. The individual circumstances of all four taxpayers will not impact the market clearing price. Potential sellers and buyers would neither sell nor buy properties from individuals who expect to charge more, or pay less, than what is obtainable elsewhere. Thus, for neither sellers nor buyers does the capitalization of tax costs mitigate the discriminatory effects of the welcome stranger system.

allegedly been burdened," prudential considerations weigh against hearing her right to travel argument. Resp. Br. at 40. Respondents miss the point. Petitioner seeks simply to have this Court apply a higher standard of review to her equal protection claim than the minimal rational basis standard. This is a question on the merits of her claim, not a jurisdictional issue. *See Zobel v. Williams*, 457 U.S., at 60 n.6 ("right to travel analysis refers to little more than a particular application of equal protection analysis").

Respondents' reliance on third party standing cases is similarly misplaced. By narrowly construing the right to travel to affect only those who have migrated across state lines, respondents fail to recognize that Proposition 13 impedes the mobility of those within the State in the same way (and to the same extent) that it does those moving across state lines. As a recent buyer, petitioner is in precisely the same permanent, fixed class of disadvantaged residents as is the newcomer to the State who purchased property at the same time she did. Because petitioner and the newcomer share the same interest, concrete and sharp presentation of Proposition 13's impingement on the right to travel is assured.¹¹

**B. Proposition 13 Imposes Grossly
Higher Taxes on Newcomers to the
State and New Property Buyers.**

Respondents contend that because Proposition 13 is not a residency requirement *in name*, it cannot implicate the fundamental right to travel. Respondents' analysis begs the question whether homeownership is a sufficient proxy for

¹¹ Any prudential considerations this case might otherwise raise have been overridden by California's grant of an express and expansive right of action to any taxpayer to seek declaratory relief from illegal or unconstitutional assessments. Cal. Rev. & Tax Code § 4808 (West Supp. 1992). Through legislation, Congress may expand standing and effectively limit the Court's standing inquiry to Article III considerations. *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91,

(continued...)

residency to render favorable treatment for longer term homeownership an impingement on the right to travel, just as favorable treatment for longer-term residents impinges the right. The key decisions all migrants to the state must make upon arrival are where they will live, in what type of home, and whether to rent or buy their homes — decisions all adversely affected by the welcome stranger scheme. The correlation between homeownership and residency is extremely close.

While respondents acknowledge that “[a] state law implicates the right to travel when ... it uses ‘any classification which serves to penalize the exercise of that right,’” *Attorney General v. Soto-Lopez*, 476 U.S. 898, 903 (1986) (plurality opinion), quoting *Dunn v. Blumstein*, 405 U.S. 330, 340 (1972); Resp. Br. at 41-42, they simply assert that Proposition 13 does not impose such a penalty. But, by treating recent migrants who purchase homes upon arriving in California much less favorably than long-time residents who have owned their homes for many years, Proposition 13 creates precisely this sort of classification. The recent homebuying migrant pays annual property taxes several thousand dollars higher than the long-time owner of a comparable home, hardly an incidental amount despite respondents’ assertion to the contrary. Resp. Br. at 41. This penalty is imposed simply because the migrant just arrived and bought a home, rather than having done so fifteen years earlier.

That Californians like petitioner who have recently purchased property also suffer the same permanent

¹¹(...continued)

100 (1979). There is no principled reason why state legislatures should not similarly be permitted to override the prudential limitations otherwise applied by the Court. See *Richardson v. Ramirez*, 418 U.S. 24, 39 (1974) (“California is at liberty to prescribe its own rules for class actions, subject only to whether limits may be imposed by the United States Constitution”).

disadvantage does not save the classification from constitutional defect. As Justice O’Connor made clear in *Zobel*:

The circumstance that some of the disfavored citizens already live in Alaska does not negate the fact that “the citizen of State A who ventures into [Alaska]” to establish a home labors under a continuous disability.

Zobel, 457 U.S., at 75; see also *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 255-56 (1974).¹²

Despite respondents’ recent repudiation of their earlier “class-a-day” view, Proposition 13 establishes fixed, permanent classes of taxpayers. A new migrant to the state who buys a home will never pay taxes as low as the taxes paid by the 1975 base year class. The new migrant can never enter that most favored class, while many long-time owners will remain in their favored class until death, at which time they can bequeath their favored tax status to their children.¹³

Proposition 13’s authors used the politically appealing welcome stranger tax assessment method to shift the burden of future tax increases from the politically dominant property-owning majority to future newcomers and new buyers. The court below recognized that, once

¹² The fact that non-Californians can own California property, and thus may be in the most favored tax class, is similarly unpersuasive. It is only the very rare non-Californian who purchases a home in California and then moves into that home many years later.

¹³ While, as respondents contend, residential property does turn over, nearly 60% of the Los Angeles County homes in existence at the time Proposition 13 passed remain in the same hands. This includes all properties with base years of 1978 or earlier, adjusted to remove homes newly constructed since that time. J.A. 37, 46-47.

entrenched, such manifestly unfair systems are virtually impossible to dislodge politically. Pet. App. A27 n.11. Because it permanently excludes have-nots and outsiders from its most privileged ranks, and thereby impedes the right to travel, Proposition 13 should be subjected to heightened scrutiny.

Respectfully submitted,
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PROOF OF SERVICE BY MAIL

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ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 11852 Santa Monica Boulevard, Suite 3, Los Angeles, California 90025; that on February 11, 1992, I served the within *Reply Brief of Petitioner* in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereupon fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor for
Los Angeles County and the COUNTY OF LOS ANGELES,
Respondents.

**On Writ of Certiorari
To The Court of Appeal
of the State of California**

**BRIEF OF THE LEAGUE OF WOMEN VOTERS OF
CALIFORNIA AS AMICUS CURIAE IN SUPPORT OF
PETITIONER**

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I.

STATEMENT OF INTEREST AND
SUMMARY OF ARGUMENT

This case involves a challenge to the validity of Section 2(a) of California's Proposition 13.¹ Its outcome will have a very real impact on millions of Californians. In this *Amicus Curiae* Brief, the League of Women Voters of California (the "League") strongly supports the basic argument of petitioner: Proposition 13 violates the equal protection guarantees of the Fourteenth Amendment to the U.S. Constitution by creating an irrational and grossly disproportionate system of taxation for similarly situated citizens.²

And despite the significant issues that are raised by asking this Court to strike down a state adopted system of taxation under our federalist form of government, the League believes that each citizen's right to equal protection under the law must take precedence over the ability of a state to enforce an unfair and discriminatory system of taxation. The League therefore joins the petitioner in asking this Court to

¹ Proposition 13 was a State Constitutional Amendment, adopted in 1978 through the so-called "Jarvis-Gann" initiative, which added Art. XIII A to the California Constitution. The operation of Proposition 13 has been set forth in detail by petitioner and will not be repeated herein. See Petitioner's Brief on the Merits, *passim*. Like petitioner, the League does not challenge the right of the people to limit the level of taxation imposed by a state—the principal objective of Proposition 13. Rather, like petitioner, the League argues that Section 2(a) unconstitutionally allocates the property tax burden among taxpayers.

² Petitioner and respondents have both consented to the filing of this *amicus* brief. Their letters of consent are being lodged with the Clerk of the Court.

strike down Section 2(a) of Proposition 13 as unconstitutional.

A. Statement of Interest.

The League is a nonprofit, nonpartisan organization open to all women and men. Since 1920, the League has promoted informed and active citizen participation in government. A multi-issue organization, the League's voice has been heard on a full slate of issues, including voting rights, education, housing, child care, and campaign and initiative reform. Throughout the years, the League has worked as a "political watch dog" towards a single goal: fair and equal treatment for all people.

In the spring of 1977, the League took part in a comprehensive study of assessment practices and property taxes. The resulting consensus was that property taxes should be broad-based, equitably allocated, and uniformly applied so that all property owners bear their fair share of the burden. Because Proposition 13 undermines these ideals, the League campaigned against it when it appeared on the June 1978 ballot. The League was unsuccessful, and what it feared became a reality: similarly situated taxpayers are being taxed at grossly different rates.³ Al-

³ See *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259, 1271, 275 Cal. Rptr. 684 (1990) ("Because we find it is not reasonably disputable that article XIII A has resulted in gross disparities in the assessments of properties with similar current market values, we take judicial notice of that fact and treat it as having been pled"). As noted by one commentator, "[e]leven years after the passage of Proposition 13, the contours of the abstract concerns of the petitioners in *Amador Valley* have been filled in with facts which reflect significant disparities between the property tax burdens placed on owners of otherwise similar prop-

though not a politically popular position, the League today, as it did thirteen years ago, seeks to eliminate the unfair and inequitable aspects of Proposition 13.

B. Summary of Argument.

Born out of a so-called "taxpayer revolt" in 1978, there is no doubt today that Proposition 13 has created an unfair and inequitable system of taxation. There is nothing fair or equitable in requiring a new property owner to pay 10, 15, 17, and even 583 times more property taxes than his or her neighbors solely because the neighbors have owned their property for a longer period of time. Indeed, already burdened by higher mortgage costs, as well as ever-increasing development fees imposed by local governments, these newcomers are the least able to carry this disproportionate tax load.

As a humble *amicus curiae*, and pursuant to the Rules of this Court, the League will not repeat all of the arguments that are being made in the other briefs of petitioner and other amici. These other briefs will develop the core facts that demonstrate the unfairness of Proposition 13, and will discuss and analyze the legal precedent most directly on point with the legal issues raised by this constitutional challenge.

Instead, the League offers observations gained from a different perspective—one that attempts to look at the bigger picture and how this challenge fits within

erties—disparities which are tied to the date of purchase of the property, not to differences in the actual value of the property." Harvey, *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County: Equal Protection in Property Taxation, a New Challenge to Proposition 13?*, 26 San Diego L. Rev. 1173, 1194 (1989).

broadier concepts that have been the subject of action by this Court over its history. This broader view of the dispute suggests that the Court has been asked to resolve a conflict between two fundamental concerns of our Republic: our belief in a federalist form of government that includes sovereign states, and our concern that all citizens are entitled to equal protection under the law.

Petitioner is asking this Court to not only intervene in the internal workings of a sovereign state, but to overturn an amendment to that state's constitution that was adopted by a vote of the electorate. Asking a federal court to insert itself so dramatically into the affairs of a state thus raises concerns under our cherished belief in a federalist form of government.

On the other hand, petitioner is carrying the banner of equal protection when it makes this request—a banner that represents a fundamental concept that was articulated in our Declaration of Independence; a concept that brought this Country into, and out of, a bloody civil war; a concept that guided this Country successfully through the civil rights movement of the 1950's; and a concept that is very much a fundamental part of what sets the United States apart from other governments today.

The founders of this nation were enlightened enough to see that such fundamental conflicts would arise from time to time, and created a Supreme Court to resolve these conflicts. This Brief by a humble *amicus curiae* is submitted, with all respect and deference, to hopefully assist the Court in making the correct decision.

The League believes that the right of the citizens of California to equal protection under that State's

property taxation system takes precedence over the right of the State to implement an unfair, and largely ineffective, taxation system that can be replaced by numerous other options that achieve the same tax policies without discriminating against an unprotected segment of the citizenry.

The League balances the competing interests in this way because: (1) the inequities under Proposition 13 shock the conscience; (2) Proposition 13 reflects a constitutionally improper attempt by an entrenched electorate to shift burdens of general applicability to an unprotected class of newcomers; (3) Proposition 13 reflects a breakdown of the political process that has resulted in an inequity that cannot be cured absent judicial intervention; and (4) the interests of federalism are not threatened because of the availability of numerous other ways in which California can address the issue of property taxation in a manner that does not injure fundamental American values.

Indeed, so obvious are the disparities in treatment caused by Proposition 13, that the California Senate Commission on Property Tax Equity and Revenue very recently recommended both the elimination of the "*substantial inequities*" created by Proposition 13 and the consideration of certain alternatives to Proposition 13's discriminatory effects in the event this Court declares the law unconstitutional.⁴

⁴ The Commission, which was established to examine California's tax system, issued its report in June of 1991, finding that Proposition 13 "has generated substantial inequities for property taxpayers," "does not self-correct or equalize" these inequities, and "offend[s] a policy of equal taxation." *Report of the Senate Commission on Property Tax Equity and Revenue to the Cali-*

Thus, should this Court strike down Section 2(a) of Proposition 13, the Senate Report makes it clear that alternatives to these inequitable methods of taxation exist—alternatives that would create a fair, equitable, and constitutionally acceptable method of property taxation in California. The League thus requests this Court to strike down Section 2(a) so that California can begin the task of rebuilding a fair system of taxation.

II. ARGUMENT

Originally enacted to reduce a perceived unfairness in California's property tax system, Proposition 13 has itself created a grossly unfair and inequitable system of taxation in California. Under this system, those

*for*nia State Senate, *passim* (June 1991) (the "Senate Report") (emphasis added). The Senate Report sets forth various recommendations for the creation of a fair and equitable system of taxation. *Id.* According to the Commission, three compelling reasons exist to invoke this analysis: the impending legal challenge in this Court, the budget deficit on the state and local level to which the erosion of the property tax base under Proposition 13 has contributed, and the overriding goal of tax equity itself. Senate Report, at 2-3. A copy of the Senate Report has been lodged with the Clerk of the Court. In Resolution 42, wherein the Senate created the Commission, the Senate noted that: "Immediately upon the passage of Proposition 13, disparities were recognized in the treatment of homeowners and commercial property owners in similar situations who had purchased homes at different time periods This disparity has increased over time and California's system of tax assessments may result in property tax payments which fall heavily upon young families, many of whom already have difficulty in purchasing the median priced California home." Senate Report, Appendix A, at 57.

who have owned property since 1975 have escaped their fair share of the State's tax burden while those who later purchased property have been forced to subsidize the former group on an ever-increasing scale. These inequities will most likely continue to grow in the future. Fairness and equity have vanished and, absent a declaration from this Court that Section 2(a) of Proposition 13 is unconstitutional, will likely not return for some time—if ever.

A. Proposition 13 is Grossly Unfair.

It is undeniable that Proposition 13 has created great disparities in the levels of taxation between similarly situated taxpayers.⁵ For example, a sampling of owner-occupied homes in the 1988 assessment rolls by the State Board of Equalization indicated that about 2 million homes, 44% of the homes, had a 1975 acquisition base year. Senate Report, at 33. Owners of these homes paid only 25 percent of the property tax—about \$1.05 billion in taxes in 1988-89. The remaining 2.5 million homeowners paid 75 percent of the property tax—about \$3.15 billion in taxes. *Id.* Thus, after only thirteen years of Proposition 13's operation, long-time homeowners carry roughly one-quarter of the tax load while the other half, the State's new homeowners, bear nearly three-quarters of the load. *Id.* This disparity will most likely continue to increase in future years.

⁵ The studies conducted by petitioner demonstrate multiple examples of the wide disparity of taxes paid by long-time property owners versus recent owners. The studies also show that wealthier homeowners tend to receive the greatest benefits under Proposition 13, both absolutely and percentage wise. As the records in this case indicate, differentials of over 2,000% will be common before the end of this decade if current trends continue.

The immediate effect of Proposition 13 on California taxpayers was a substantial reduction of their property tax bills. Senate Report, at 26. The immediate effect of Proposition 13 on local governments was a dramatic loss of revenue. In the fiscal year following the enactment of Proposition 13, local governments faced revenue losses of approximately \$7 billion—an amount equal to 57 percent of property tax revenues and 22 percent of local revenues from all sources. Senate Report, at 28.⁶ As a result, the Legislature was forced to adopt a “massive emergency fiscal assistance plan for local governments.” *Id.* This “bail-out” was available only because of the large surplus accumulated in the General Fund. That surplus soon dwindled, and for the fiscal year 1991-92 the State faces a \$14 billion deficit. *Id.*, at 3.

The results of this loss of revenue are two-fold: (1) California’s infrastructure is deteriorating and becoming more inadequate with the passage of every day (*id.*, at 47)⁷; and (2) the burden of attempting to ad-

⁶ As a result, the passage of Proposition 13 has been called “the most significant fiscal act of the people of California in modern times.” Henke and Woodlief, *The Effect of Proposition 13 Court Decisions on California Local Government Revenue Sources*, 22 U.S.F.L. Rev. 251, 253 n.16 (Winter/Spring 1988). For example, in 1977, the property tax represented the mainstay of local government budgets; it accounted for 36.3% of county revenues, 22.4% of city revenues, and 67.4% of non-enterprise special district revenues. *Id.* at 251-52 n.3. The dramatic overnight reduction of revenue from this major source of funding therefore had a significant impact on local government budgets.

⁷ The California Legislative Analyst’s Office recently published a booklet discussing the State of California’s growing need to “revitalize and expand” its infrastructure (i.e. highways, schools, jails, utility systems, and parks). Hill, *State Infrastructure, Per-*

dress these inadequacies is increasingly being placed on newcomers (*id.*, *passim*). Moreover, faced with a cap on taxation rates, local governments are continually looking for new ways to raise additional revenue, often at the expense of the newcomer. For example, since the passage of Proposition 13, “the widespread increase in developer fees (estimated now at \$3 billion annually) has been used by local governments . . . as a source of local revenue.”⁸ These fees, of course, are paid solely by newcomers.

spectives and Issues, Reprint 1991-92 Budget (Leg. Analyst’s Office Feb. 1991). This need will become even more pressing in the years ahead as California is faced with dynamic economic and demographic changes. For example: (1) demographic projections reveal that California schools will have to accommodate an average of 210,000 new pupils per year for the next decade. Likewise, higher education enrollment is expected to grow by thirty to fifty percent by the year 2005. Estimated capital outlays towards education may reach \$19.3 billion between 1991 and 1995; (2) estimated capital outlays for transportation, including recovery from damage caused by the Loma Prieta earthquake last year, may reach \$12.1 billion in the next five years; and (3) given anticipated inmate populations, the California penal system may require up to \$5.0 billion over the next five-year period to meet demand. The burden of providing these services for the general population is increasingly falling on the shoulders of the newcomer. *Id.* at 3-5. And while it is not the role of this Court to set California’s policy as to how to raise revenues, it is the role of this Court to insure that the implementation of such policies does not violate the U.S. Constitution.

⁸ Senate Report, at 48. In some areas, developer fees have reached \$14,000.00 for even modest homes. See Bay Area Council, *Taxing the American Dream: Developer Fees & Housing Affordability in the Bay Area*, at 3 (1988). These fiscal constraints not only suggest that local officials are more likely to approve developments that are high revenue generators, but that, when homes are built, the price of these few homes is greatly in-

The situation is equally dire for new business owners. Like homeowners, business owners must pay a much higher price for their property than long-standing competitors, they may be required to pay huge developer fees, and they must bear vastly higher property tax payments than long-standing competitors. New business owners must then either pass the higher taxes on to their customers (and hence charge more than long-time competitors) or reduce any profits they would otherwise realize. Neither outcome is a welcome result.

All of these burdens, of course, fall on those least able to bear this burden—the newcomers. The newcomers will pay the highest price for a house or business in the neighborhood (and thus a higher mortgage payment), pay the passed-on costs of substantial developer fees, and then, on top of all of this, pay 10, 15, 17, or even 583 times the property taxes of his or her neighbors. The newcomers, whether young people, immigrants, military personnel, poor people, or relocated employees, must carry this burden even though they never had the opportunity to purchase a home or business at the time of the previous low assessment, will never have the opportunity to join the class of low assessment taxpayers, and will never have their tax payments equalized over time with the taxes of the low assessment group.

creased. See Senate Report, at 48. The result being the loss of affordable housing.

B. The "Tyranny Of The Majority" Aspects Of Proposition 13 Make This A Case Where The Court Should Exercise Its Role Within The Federal System As A Supervisor Of The Political Process.

The Fourteenth Amendment requires that no person shall be denied equal protection of the law by any state. Proposition 13 runs afoul of this requirement because the discriminatory "tyranny of the majority" protections for long-term homeowners have created a taxation system that improperly treats some citizens (long-term homeowners) more equally than others (short-term homeowners).

Like petitioner, the League does not challenge the right of the people to enact legislation via an initiative. However, laws enacted directly by the people, like any other, are subject to constitutional scrutiny. As stated by this Court in *Lucas v. Colorado General Assembly*, 377 U.S. 713 (1964): "A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be. We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause" *Id.* at 736-37.

According to Chief Justice Burger in *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290 (1981), "[i]t is irrelevant that the voters rather than a legislative body enacted [this law], because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation." *Id.* at 295. In fact, Professor Eule has persuasively argued - that "judicial review of direct

democracy frequently calls for less rather than more [judicial] restraint." Eule, *Judicial Review of Direct Democracy*, 99 Yale L.J. 1503, 1507 (1990).⁹

And while any court should be cautious in examining the will of the people when they have enacted a law, "[i]t is plain that the electorate as a whole, whether by referendum or otherwise, could not order . . . action violative of the Equal Protection Clause." *City of Cleburne, Texas v. Cleburne Living Center*, 473 U.S. 432, 448 (1985).

Proposition 13 demonstrates the dangers of invoking the "tyranny of the majority" when utilizing the initiative process because it invidiously divides the citizens of California into ever-increasing permanent classes with those at the back of the line increasingly paying for those at the front of the line. It thus requires the newcomer to pay an ever-increasing share of the needs of the general public as a whole.

In this regard, the League believes that the Court's reasoning in *Nollan v. State Coastal Commission*, 483 U.S. 825 (1987), is instructive. In *Nollan*, this Court found that singling out one property owner or group of owners to address a general problem was (absent compensation) an unconstitutional taking. Such is also the case here. Proposition 13 singles out new property

⁹ Studies addressing Proposition 13 support this argument, finding that the electorate was behaving rashly, and experiencing a "surge of recklessness, a period of nearly blind emotion." . . . Even a calm, well-informed voter possesses neither the time nor the expertise to appreciate the ramifications of a fiscal blockbuster such as Proposition 13." Henke and Woodlief, *The Effect of Proposition 13 Court Decisions on California Local Government Revenue Sources*, 22 U.S.F.L. Rev. 251, 255 (Winter/Spring 1988).

owners to bear a disproportionate burden of the State's taxation needs, a classic example of what *Nollan* prohibits—the government "forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Id.* at 835-36 n.4.

The raw political power of the majority to look after their self-interests at the expense of the minority is forcefully demonstrated in Proposition 13.¹⁰ Newcomers will always be a minority, and since Proposition 13 is a part of the State Constitution, the self-interested majority has essentially put its repeal out of reach of ordinary political processes.¹¹ Consequently, the newcomer has no realistic hope for relief, except from the courts.

As this Court has noted, permitting "states to divide citizens into expanding numbers of permanent classes . . . could produce nothing but discord and

¹⁰ "The Founding Fathers were cognizant of the detrimental effects of 'mob rule' or direct democracy when they formulated our system of representative government. . . . Today's voters are not in a position to understand the complex intricacies of laws that profoundly affect the 'liberty' of others. . . . The need for judicial review increases as direct democracy increases and this is particularly true where the voters are not sufficiently informed as to the ramifications of the law. Thus, when issues are presented that are subtle, silent, or complex . . . the courts should closely scrutinize the law in order to avoid the tragic possibilities of 'mob rule.'" Mass, *Proposition 103: Too Good To Be True*, 12 Whittier L. Rev. 403, 432-33 (1991).

¹¹ And even if the members of the Legislature were willing to challenge the voters who see personal benefits in keeping an admittedly unfair system, arguably an act equivalent to political suicide, they are powerless to do so absent a constitutional amendment (an unlikely event at best).

mutual irritation." *Zobel v. Williams*, 457 U.S. 55, 64 & n.12 (1982). This is a good description of the situation today in California, and there could scarcely be a clearer example of legislation which, without any justification other than "I got here first," discriminates between similarly situated citizens. Such a law effectively creates an ever-increasing number of classifications based simply on duration of residence in a particular home, reduces taxes on an ever-increasing basis for long-term homeowners, and forces new homeowners on an ever-increasing basis to subsidize the government services received by these long-term homeowners. Although Proposition 13's unfair and unequal system of property taxation has stood the test of time, it does not stand up to constitutional scrutiny.¹²

In *Zobel*, this Court recognized that allowing a state to draw such distinctions between citizens would lay the foundation for a slippery slope of ever-growing unequal treatment:

¹² This result would be consistent with *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, W. Va.*, 488 U.S. 336 (1989), wherein this Court unanimously held that for a state to tax owners of recently acquired properties at fair market value while taxing "neighboring comparable property which has not been recently sold . . . at only a minor fraction of that figure" violated the Equal Protection Clause. *Id.* at 342. To pass constitutional scrutiny, "the seasonal attainment of a rough equality in tax treatment of similarly situated property owners" was required. *Id.*, at 343. This case, much more than the practices of the local assessor in *Allegheny*, presents a dangerous national precedent (if allowed to stand). Indeed, it would appear illogical to conclude that it is proper for California to utilize a State-wide discriminatory system of taxation while it was improper for the Webster County assessor to utilize a similar enforcement procedure at the local level.

If the states can make the amount of a cash dividend depend upon length of residence, what would preclude varying university tuition[,] . . . limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile. *Could states impose different taxes based on length of residence?* . . . [This scheme] would permit the states to divide citizens into expanding numbers of permanent classes.

Id. at 64 (emphasis added). Justice Brennan concurred by stating:

In my view, it is difficult to escape from the recognition that underlying any scheme of classification on the basis of duration of residence, we shall almost invariably find the unstated premise that "some citizens are more equal than others." We rejected that premise and, I believe, implicitly rejected most forms of discrimination based on length of residence, when we adopted the Equal Protection Clause.

Id. at 71 (emphasis added). Thus, despite concerns over the delicate balance of the sometime competing goals of federalism and equal protection, this Court has not hesitated in the past to follow the constitutional demand of equal protection in the proper circumstances. See *Allegheny*, 488 U.S. at 343.¹³

¹³ See also *Hooper v. Bernalillo County Assessor*, 472 U.S. 612, 616-17 (1985); *Curtis, California's Proposition v. Webster County West Virginia: The Elephant Spooked by the Mouse*, 7 J. Prop.

On the other hand, what will happen if this Court condones Proposition 13 and allows it to stand? Most likely it will remain in place in California, thereby ever-widening the gap between the Proposition 13 haves and have-nots. Not wanting to be left out, long-time homeowners in other states may well pick up the Proposition 13 banner and pass similar legislation. Indeed, since the current homeowners (and voters) of any state would benefit both today and on an ever-increasing basis in the future from such legislation, the citizens of many states may pass such legislation.

The result, of course, being that people in those states may become land-locked and reluctant to move to other Proposition 13-like states because they will then become taxation victims, not beneficiaries, of the "welcome stranger" effect of these laws. People living in non-Proposition 13-like states may also tend to avoid moving to Proposition 13-like states because of the fear of bearing the unfair newcomer tax burden in those states. The consequence being a significant impact on the right to travel.¹⁴

Tax 7, 28 (1988) ("Article XIII A does not establish a property tax class founded on categories previously approved by the U.S. Supreme Court such as geography, the nature or use of the property, business versus non-business use, income, wealth, relationship to the deceased, wage-earner versus self-employed, or any of the many other possible individual distinctions employed in income, property, and other tax systems. The distinction is date of purchase"); *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352-53 (1918) ("And it must be regarded as settled that intentional systematic undervaluation by state officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property").

¹⁴ See *Zobel v. Williams*, 457 U.S. 55, 68 (1982) (Brennan, J., concurring) ("For if each state were free to reward its citizens

C. Enforcement Of Equal Protection Values Will Not Be A Significant Hardship On California, Nor Will It Restrict California's Taxation Options In Any Significant Way.

The enforcement of the Equal Protection Clause here will not be a significant hardship on California, nor will it restrict California's taxation options in any significant way. Indeed, the Senate Commission has already studied and prepared for the possible invalidation of Proposition 13 by this Court. The Commission considered a wide number of alternatives to Proposition 13 that would restore equity to the system and protect local governments from fiscal insolvency while simultaneously protecting homeowners from being "taxed out of their homes."¹⁵

incrementally for their years of residence, so that a citizen leaving one State would thereby forfeit his accrued seniority, only to have to begin building such seniority again in his new State of residence, then the mobility so essential to the economic progress of our nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive").

¹⁵ In fact, the Commission found certain outgrowths of Proposition 13 so troubling that it recommended their abolishment even absent a ruling from this Court declaring Section 2(a) of Proposition 13 unconstitutional. For example, under the current system, property owned by corporations is not reappraised unless over 50% of the corporate shares are sold to one buyer. Given this requirement, some corporate entities have devised ingenious ways to escape assessment, for example, by selling property in stages. The Commission recommended amending the definition of a "change of ownership" to provide for a reassessment in light of a *substantive* sale. The Commission also recommended that inherited real property no longer remain exempt from reassessment, because this provision favors the children of homeowner parents over those of non-homeowner parents. The Commission recognized that this privilege can be perpetuated successively, thereby forestalling market revaluation

If the Court invalidates Proposition 13, California's tax structure will revert back to an equally applied market valuation scheme. Senate Report, at 4. The Commission believes this market valuation system to be more reasonable than an acquisition value system provided that homeowners are protected. Accordingly, the Commission recommends phasing into a market valuation system in order to ease the transition for homeowners. The Commission recommends the following transition:

1. The State could return to market value assessments for all new and current property taxpayers, excepting those who elect to phase into market value. *Id.*

2. For those who elect to phase into market value, the Board of Equalization could increase the annual assessment cap by 2% per year until full market value is reached. This increase could be achieved gradually in order to protect current homeowners from sudden and large property tax increases. For example, in the first year, the cap could be raised to 4%, then 6%, and so on until full market value is reached. *Id.* at 5.

3. To avoid greatly increasing taxes to long-time property owners and generating governmental revenue windfalls, the Commission recommends maintaining *revenue neutrality* by lowering the country-wide tax rate. *Id.* at 5. The desired total revenue could be adjusted annually to take inflation and population growth into account. This would insure that the re-

indefinitely. Finally, the Commission found fault with AB 8, the formula with which property tax revenue is distributed to local government jurisdictions. See Senate Report, at 1-16.

turn to market valuation does not result in an overall increase in the property tax burden.

4. In order to further protect low income homeowners, the Commission recommends implementing a homeowners' exemption that would more realistically reflect the California housing situation.

Thus, California has already examined and is prepared to implement a fair, equitable, and revenue neutral property taxation system.

III.

CONCLUSION

It is undeniable that Proposition 13 has created a grossly unfair and inequitable system of taxation in California. Unfortunately, the political reality of Proposition 13 is that neither the voters nor the Legislature or, for that matter, even the State courts, will provide a remedy for this system of taxation. It is precisely this situation which requires the action of this Court.

This Court has held that "rough equality," not artificial distinctions such as duration of residency, must be utilized by a State when it places different burdens on similarly situated citizens. This Court is being asked to require the State of California to do the same here—no more, no less. And if the Court so rules, California has already taken steps to ensure that it is prepared to create, with a minimum of unfairness or surprise, a property taxation system that will be equally applied to all of its citizens.

It is therefore respectfully requested that this Court declare Section 2(a) of Proposition 13 unconstitutional.

Respectfully submitted,

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No. 90-1912

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,
v. *Petitioner,*

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County, and the
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Respondents.

On Writ of Certiorari to the
Court of Appeal of the State of California
Second Appellate District

BRIEF AMICI CURIAE
OF THE BUILDING INDUSTRY ASSOCIATION
OF SOUTHERN CALIFORNIA, INC. AND
THE NATIONAL ASSOCIATION OF HOME BUILDERS
IN SUPPORT OF PETITIONER

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THE NATIONAL ASSOCIATION OF HOME BUILDERS
IN SUPPORT OF PETITIONER**

INTEREST OF AMICI¹

Amicus curiae Building Industry Association of Southern California ("BIA") is a non-profit trade association whose more than 2200 individual and company members produce the great majority of new housing in the South-

¹ Petitioner and respondents both have consented to the filing of this *amicus* brief. Their letters of consent are being lodged with the Clerk.

ern California area—the Nation's largest market for residential housing. The BIA and its members are dedicated to providing new housing at affordable prices. This objective has become increasingly difficult to achieve during the past decade,² and has been made drastically more difficult by the “welcome stranger” provision of Article XIII A of the California Constitution, popularly known as Proposition 13.³

Amicus curiae the National Association of Home Builders (“NAHB”) is a non-profit trade association representing over 153,000 builder and associate members throughout the United States. Its members include not only people and firms that construct and supply single family homes but also apartment, condominium, commercial and industrial builders, as well as land developers and remodelers. The NAHB is the voice of the American shelter industry. Its mission is to enhance the climate for housing and the building industry and to promote policies that will keep housing a national priority. Chief among its goals is providing and expanding opportunities for all consumers to have safe, decent and affordable housing. This goal demands that the NAHB assist the challenge to Proposition 13's welcome stranger provision.

² The percentage of employed Californians who can afford the average-priced home is under 20% and dropping. California Senate Office of Research, *California Housing: Who Can Afford the Price?* at 17 (1990).

³ The phrase “welcome stranger” was coined by commentators as a sarcastic description of tax provisions—such as Proposition 13—that result in recently sold properties having disparately higher appraised values than comparable properties that have not been sold. Existing taxpayers “welcome” such newcomers—i.e. “strangers.” See, e.g., Crain's N.Y. Bus., April 7, 1989, at 8 col. 3 (letter to the editor); Winerip, *Howdy, Stranger, Have a Big Dose of Realty Tax*, N.Y. Times, April 11, 1989, at B1, col. 1; Norton, *The ‘Welcome Stranger’ Provision of Prop. 13 Clearly Is Unwelcome*, L.A. Times, Feb. 9, 1989, § 2, at 9, col. 1.

INTRODUCTION AND SUMMARY OF ARGUMENT

The BIA and NAHB strongly support the arguments made by petitioner Nordlinger: The welcome stranger provision of Proposition 13—which results in grossly and irrationally disproportionate taxation of similarly situated taxpayers—violates the equal protection guarantees of the Fourteenth Amendment to the United States Constitution. Property tax differentials of 1,000% and more, based solely on the date of purchase, cannot pass constitutional muster. Forcing recent purchasers to bear the brunt of inflation and to subsidize an ever-declining effective property tax rate for long-time owners violates the Equal Protection Clause. This unjust attempt at wealth redistribution cannot be sustained.

In this brief, *amici* address two narrow issues. First, the BIA and NAHB demonstrate the devastating effect Proposition 13's welcome stranger provision has had on new home construction in California. Second, *amici* address the Court's decision in *Allegheny Pittsburgh Coal Co. v. County Comm'n of Webster County*, 488 U.S. 336, 344 n.4 (1989). That case cannot be read to infer constitutional significance from the fact that the property tax assessment policy struck down there was effectuated through a county's enforcement practices, whereas Proposition 13's virtually identical welcome stranger assessment policy is codified as part of the State's Constitution.

Compliance with the Equal Protection Clause of the United States Constitution cannot be determined by popular vote. The majority of citizens in a State cannot insulate discriminatory actions from federal constitutional scrutiny by adopting them through initiative or referendum rather than through the State's legislative or executive officials. Regardless of how a State decides to adopt discriminatory laws or practices, those laws and practices remain subject to review under a single federal constitutional standard. The method of adoption does not affect the degree to which the federally protected rights of the minority are abridged by the majority—or protected by the Constitution.

To permit the degree of constitutional scrutiny to depend on how a State adopts a discriminatory law or practice would violate fundamental principles of federalism. It would require federal judges to intrude into the political structure and processes of state government and to establish a hierarchy of state law-making procedures, with some more presumptively valid than others. Equal protection analysis correctly assumes that each State, consistent with Art. IV, § 4, has "a Republican form of government" and that the laws of the State therefore reflect the will of the majority. For purposes of federal constitutional analysis, a state constitutional amendment adopted directly by the majority through referendum or initiative is no more or less legitimate than a state statute or administrative practice adopted by officials in the legislative or executive branches of state governments.

ARGUMENT

I. PROPOSITION 13'S GROSSLY INEQUITABLE ASSESSMENT SYSTEM HAS EXACERBATED THE DIFFICULTY IN PROVIDING AFFORDABLE NEW HOME CONSTRUCTION IN CALIFORNIA.

Although Proposition 13 was passed in 1978 apparently as part of an effort to protect average homeowners from the threat of escalating property taxes, the taxation system it established is grossly unfair and inequitable. Proposition 13's unique method of assessment produces wide variations in the amounts of property tax paid on similar or even identical parcels of real property—favoring long-time owners and penalizing recent purchasers. Its impact is especially harsh on new homeowners, who generally find themselves paying 10, 15, and 20 times as much property tax as their stay-put neighbors.⁴

⁴ Similarly, new businesses are faced with large differentials in property tax compared to their established competitors.

Even beyond this direct impact, Proposition 13 has generated extensive discriminatory impositions on new homeowners. The immediate result of Proposition 13 has been a dramatic loss of revenue for local governments, who historically have relied upon property taxes to fund the projects and services they provide their citizens.⁵ Faced with the resultant fiscal inadequacies and Proposition 13's one percent cap on taxation rates, local governments have sought new sources of revenue. And this search has been implemented primarily at the expense of the newcomer.

Developer fees—monetary exactions or dedication requirements designed to mitigate the financial impact on local governments attributable to new development⁶—are a prime example of this phenomenon. Since the passage of Proposition 13, "the widespread increase in developer fees (estimated now at \$3 billion annually) has been used by local governments as a source of local revenue."⁷ In some areas, developer fees have reached \$37,000 for a modest middle class home. For all categories of developer fees, California now leads the Nation in the percentage of its communities which impose such fees.⁸ These fees are largely passed along to the purchasers of new homes, because they greatly increase the cost of new construction. Moreover, they are regressive. Because most developer fees are flat amounts, they fall more heavily—percentagewise—on less costly homes than on expensive

⁵ In 1977, for example, 40 percent of local revenues in California were derived from property taxes. *Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate* at 17 (June 1991) (hereafter "Senate Report"). A copy of the Report has been lodged with the Court.

⁶ See generally Cal. Gov't Code §§ 54990, 66000(b) (Deering 1991); Cal. Health & Safety Code § 17951 (Deering 1991).

⁷ Senate Report at 48.

⁸ See J.E. Frank & R.M. Rhodes, *Development Exactions* at 133-134 (1987 ed.).

ones, further worsening the affordability problem that is of particular concern to the BIA and NAHB.

II. THE PROCEDURAL DISTINCTIONS BETWEEN THE WEBSTER COUNTY ASSESSMENT PRACTICE STRUCK DOWN IN *ALLEGHENY* AND PROPOSITION 13'S "WELCOME STRANGER" PROVISION ARE WITHOUT CONSTITUTIONAL SIGNIFICANCE.

In *Allegheny*, the Supreme Court held that the inequitable property tax assessment practices of Webster County, West Virginia violate the Equal Protection Clause. The Assessor of Webster County, exercising the discretion conferred upon her by West Virginia law, valued real property on the basis of recent purchase price. With respect to property that had not recently been conveyed, the assessor based the value on a slight modification in previous assessments. *Allegheny*, 488 U.S. at 340. "This approach systematically produced dramatic differences in valuation between . . . recently transferred property and otherwise comparable surrounding land." *Id.* at 341. Because "the constitutional requirement is the seasonable attainment of a rough equity in tax treatment of similarly situated property owners," *id.* at 343, the Court held that the failure of the assessor's adjustments to correct the "relative underevaluation of comparable property in Webster County over time" denied the purchasers of new property the equal protection of West Virginia's laws, *Id.* at 346.

Specifically noting that California had "adopted a similar policy" in Proposition 13's welcome stranger provision, the Court added, in a footnote:

We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the law of a State generally applied, instead of the aberrational enforcement policy it appears to be.

Id. at 344 n.4.

Plainly, the *Allegheny* Court reserved the precise question presented by this case: whether Proposition 13, with its discriminatory property tax assessment policy that the Court has described as "similar" to Webster County's, violates the Equal Protection Clause. To the extent the Court's footnote statement can be read to suggest that the policy of the Webster County assessor might pose a less troublesome equal protection question were it implemented pursuant to explicit provisions in a state statute or constitution—as is Proposition 13's welcome stranger assessment policy—that reading is unfounded. The relative undervaluation of comparable property that was the touchstone of the constitutional infirmity in *Allegheny* is more extreme and more pervasive in California where a similar (or even harsher) assessment method is a mandated general state policy. It would turn established principles of equal protection on their head to conclude that it is more preferable for California to enact a discriminatory constitutional provision than for Webster County to utilize a discriminatory enforcement practice consistent with West Virginia's constitution and laws.

A. The Manner In Which a State Chooses to Formulate or Implement State Policy Is Irrelevant to Equal Protection Analysis.

There is no justification for treating state action differently, for equal protection purposes, based on the form it takes—least of all for affording Proposition 13 special deferential treatment. The text of the Fourteenth Amendment makes no distinction between state enforcement practices—"aberrational" or not—and more generally applied state enactments. The Fourteenth Amendment provides that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." The mandate of equal protection applies simply to the "State," encompassing all branches of state government and all

manners in which the people of a State choose to act through their state government.

The Equal Protection Clause is unquestionably concerned with States' enforcement practices. But the drafters of the Fourteenth Amendment sought to forbid the enactment of discriminatory laws as well. As Senator Howard, one of the sponsors of the amendment, stated,

This [equal protection clause] abolishes all class legislation in the States and does away with the injustice of subjecting one caste of persons to a code not applicable to another.

6 C. Fairman, *History of the Supreme Court of the United States—Reconstruction and Reunion 1864-88*, at 1925 (1971).

The Court's equal protection cases have never distinguished between state enforcement actions and legislative enactments. The Court long ago made clear that the Equal Protection Clause serves "to secure every person within the state's jurisdiction against intentional and arbitrary discrimination, *whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.*" *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352 (1918) (emphasis added). Nor has the Court treated enforcement practices as somehow more "suspect" than legislation. To the contrary, the Court has indicated that a state statute unconstitutional on its face might, in practice and operation, be shown not to violate equal protection guarantees. *Williams v. Vermont*, 472 U.S. 14, 27 (1985). The Court has examined the constitutionality of discriminatory executive, administrative and judicial behavior using the same equal protection analysis it applies to discriminatory state and local legislation. See, e.g., *Snowden v. Hughes*, 321 U.S. 1 (1944) (upholding state officers' administration of state statute); *Nashville Chattanooga & St. Louis Ry. v. Browning*, 310 U.S. 362 (1940) (upholding property assessment practices of state agency); *Yick Wo v. Hop-*

kins, 118 U.S. 356 (1886) (invalidating licensors' discretionary administration of municipal ordinance).⁹

In *Snowden*, the Court directly analogized administrative enforcement practices to legislative enactments in analyzing the constitutionality of the Illinois State Primary Canvassing Board's refusal to certify the election of a candidate for the state legislature. The Court ruled that the officials' actions were no more violative of the Equal Protection Clause "than if the Illinois statutes themselves" had mandated the action. 321 U.S. at 10. The Court observed that the practical effect of discriminatory "enforcement" action "is the same as though the discrimination were incorporated in and proclaimed by the statute . . . even though [the action] is neither systematic nor long-continued." *Id.* at 9-10. Consequently, the Court held, "the action of the Board is . . . subject to constitutional infirmity *to the same but no greater extent* than if the action were taken by the state legislature." *Id.* at 11 (emphasis added). This holding alone makes clear that Proposition 13, by virtue of its status as the codified law of California, is not presumptively more "constitutional" than was Webster County's assessment practice.

Nor does the fact that Proposition 13 was enacted through voter initiative—rather than by the California Legislature—render it meaningfully different for purposes of equal protection analysis from the Webster County assessment practice struck down in *Allegheny*.¹⁰

⁹ Distinguishing between enforcement of state statutes and the statutes themselves is, in this context, too restrictive a view of state action. See *Nashville, Chattanooga & St. Louis Ry. v. Browning*, 310 U.S. 362, 369 (1940) ("It would be a narrow conception of jurisprudence to confine the notion of 'laws' to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled state practice cannot supplant constitutional guarantees, but it can establish what state law is.").

¹⁰ The Webster County welcome stranger provision, although administratively imposed, was indirectly endorsed by a vote of the

The State, acting through a majority of the electorate, has no greater leeway in treating its citizens unequally than does the State when acting through legislation, administrative regulation, or an individual official. The Court has consistently agreed. Thus, in *Lucas v. Forty-Fourth General Assembly*, 377 U.S. 713 (1964), the Court held regarding a voter referendum:

A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be. We hold that the fact that a challenged legislative apportionment plan was approved by the electorate *is without federal constitutional significance*, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause.

Id. at 736-37 (emphasis added). *Accord City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 488 (1985) ("[I]t is plain that the electorate as a whole, *whether by referendum or otherwise*, could not order . . . action violative of the Equal Protection Clause.") (emphasis added); *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 295 (1981) ("It is irrelevant that the voters rather than a legislative body enacted [this law] because the voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation.").

In expressly refuting any reliance on the fact that a challenged discriminatory initiative is enacted by vote of the State's electorate, the Court has explained:

"[S]tate racial legislation would unquestionably enjoy overwhelming electorate approval in certain of our states, yet no one would argue that this factor could compensate for manifest inequity. It is too clear for argument that constitutional law is not a

people; the assessor is elected by popular vote every four years and the policy continued over multiple elective terms. *See* W. Va. St. § 3-1-17 (West 1991); *Allegheny*, 488 U.S. at 344 (noting that property tax disparities caused by welcome stranger scheme "have continued for more than 10 years with little change").

matter of majority vote. Indeed, the entire philosophy of the Fourteenth Amendment teaches that it is personal rights which are to be protected against the will of the majority. . . . It is no answer to say that the approval of the [discriminatory policy] necessarily evidences a rational plan. The plaintiffs have a right to expect that the cause will be determined in relation to the standards of equal protection. Utilization of other or different standards denies them full measure of justice."

Lucas, 377 U.S. at 737 n.30, quoting *Lisco v. Love*, 219 F. Supp. 922, 944 (D. Colo. 1963) (Doyle, J., dissenting), *rev'd by Lucas*.

In sum, the fact that California has adopted its discriminatory property tax assessment policy through voter initiative does not lessen the rigor of equal protection analysis: The manner in which the State chooses to effectuate its discriminatory classification is irrelevant for purposes of equal protection analysis. A different view would effectively involve the federal courts in judging the propriety of the States' decisions regarding the method they use to formulate and implement their policies and laws—and inevitably result in federal courts dictating to States the methods they should use. This would be a clearly impermissible (and undesirable) intrusion into the workings of state governments.

Other than guaranteeing the States a "Republican Form of Government" in Article IV, the Constitution is silent regarding the structure of state government. The constitutional separation of powers mandate does not apply to the States: Citizens of States are free to act through their legislatures, administrative bodies and individuals, or judiciaries, or through the initiative and referendum process—as they see fit. "How power shall be distributed by a state among its government organs is commonly, if not always, a question for the state itself." *Highland Farms Dairy, Inc. v. Agnew*, 300 U.S. 608, 612 (1937). "The Constitution of the United States . . . has

no voice upon the subject.” *Id.* And the federal courts lack the power to involve themselves in the question. *Id.*¹¹ A determination by the Court that a policy incorporated by voter initiative into a state constitution should be re-reviewed under a more deferential equal protection analysis than an identical policy effectuated through the practices of county officials acting through delegated authority would impermissibly pressure States to adopt their laws by the favored procedures. Such interference would contravene the fundamental principles of comity and federalism embedded in our Constitution.

B. If Distinctions Are Drawn, Voter Initiatives May Be Entitled to Less Deference in the Equal Protection Context.

If the Court, contrary to the above argument, takes the unprecedented step of distinguishing between different forms of state action, the fact that Proposition 13’s welcome stranger provision was enacted through voter initiative may make it *more suspect* than legislative enactments.¹²

In the context of equal protection challenges, the Court, when applying the rationality test, has generally deferred to the lawmakers’ classification scheme. *See, e.g., City of New Orleans v. Duke*, 427 U.S. 297, 303 (1976). In part, the deferential approach is premised on a presumption that legislatures conduct hearings and have access to far greater information, and that legislatures are more competent factfinders and policymakers than courts. In addition, Article VI of the United States Constitution requires

¹¹ *See Pacific State Tel. & Tel. Co. v. Oregon*, 223 U.S. 118 (1912) (holding nonjusticiable the question whether State’s use of voter initiative to enact a gross-receipts tax was consistent with a republican form of government).

¹² For a cogent and powerful argument that voter initiatives deserve a harder look than courts give legislative enactments, see J. Eule *Judicial Review of Direct Democracy*, 99 Yale L. Journal 1503 (1990) (hereafter “Eule”).

all public officials—including state and local officials—to support the Constitution. Because legislators are obligated to assess the constitutionality of their enactments, those enactments are accorded some level of “presumption” that they are constitutional. Further, the legislature, periodically elected by democratic process, enacts statutes in a deliberative manner that (at least ideally) will temper the imposition of the will of the majority upon the minority and results in the attainment of the collective “common good.”¹³

None of these factors is present with voter initiatives such as Proposition 13. Whatever may be said about the proficiency and accuracy of legislative fact-finding, the legislature has greater experience at culling facts, and greater resources for doing so, than the electorate.¹⁴ In addition, Article VI does not impose the obligation of constitutional compliance on the electorate, and there is no reason to believe initiative campaigns typically focus on the measure’s constitutionality. Most important, the electorate is not accountable to anyone, nor do the voters stand in a representative capacity which forces them to act in light of differing interests. An initiative enactment

¹³ Notably, the California Legislature—or at least the Senate—has utilized its fact-finding resources to conduct a study of Proposition 13’s impact. The Senate Commission assigned to this task concluded in June 1991 that Proposition 13 “has generated substantial inequities for property taxpayers,” “offend[s] a policy of equal tax treatment for taxpayers in similar situations,” and should be eliminated. Senate Report at 1, 9, *passim*. But because Proposition 13 is part of the state constitution, the Legislature’s hands are effectively tied.

¹⁴ The California Supreme Court long ago recognized that the vast majority of the voters do not carefully consider proposed initiative measures, have only the most superficial knowledge of their content, and do not know how it will probably affect their own (let alone others’) interests. *Wallace v. Zinman*, 200 Cal. 585, 592, 254 P. 946, 949 (1927). *Accord Eule*, 99 Yale L. J. at 1508-09, 1569-71 (providing anecdotal evidence of same in relation to recent California initiatives).

does not involve a deliberative process that requires consideration of differing views and compromise. Rather, an initiative or referendum represents the uncompromised, unfiltered view of the bald majority, flexing its majoritarian will. Particularly in the context of equal protection analysis—where the entire doctrine is designed to protect minority interests—there is reason to be suspect of voter initiatives.¹⁵

C. Consistency With State Law Is Irrelevant for Purposes of This Court's Equal Protection Analysis.

In their briefs in opposition to the Petition for Certiorari, respondents and *amici* the Howard Jarvis Taxpayers Association ("HJTA") and Paul Gann's Citizens Committee ("PGCC") find their own meaning in footnote 4 to the Court's *Allegheny* opinion.¹⁶ They argue that the distinction between Webster County's apparently "abberational enforcement policy" and Proposition 13's "generally applied" welcome stranger provision is that the Webster County assessor was acting contrary to state law whereas

¹⁵ Proposition 13 is a prime example. It was born out of a "taxpayer revolt" after the California Legislature failed to pass several bills designed to relieve ever-increasing property taxes. See Senate Report at 25. But the tax "relief" Proposition 13 affords disproportionately favors those individuals who owned property at the time of its enactment, while forcing newcomers (many of whom were not part of the electorate when Proposition 13 was enacted) to pay a substantially greater share of the tax burden. These newcomers are an inchoate group. Not surprisingly, then, Proposition 13 tramples their interests.

¹⁶ Messrs. Jarvis and Gann were co-authors of Proposition 13. HJTA and PGCC were founded to defend Proposition 13. HJTA and Gann submitted an *amicus* brief in *Allegheny* asking that the Court reserve judgment on Proposition 13. See Brief *Amicus Curiae* of Howard Jarvis Taxpayers Association and Paul Gann's Citizens Committee in Opposition to Petition for Certiorari at 2 (hereafter "*Amici* Brief").

Proposition 13 is the state law.¹⁷ This attempt to distinguish *Allegheny* is entirely misconceived.

First, contrary to respondents' and *amici*'s contention, the Webster County assessor was *not* acting contrary to West Virginia law in assessing recently purchased property based on purchase price, with relatively minor modifications in the outdated assessments of land that had not been recently sold. The Webster County Commission, sitting as a Board of Equalization and Review, repeatedly reviewed and approved the assessor's actions. *Allegheny*, 488 U.S. at 339. And the West Virginia Supreme Court specifically held that the decisions of the assessor and the Board did *not* violate the West Virginia constitution and statutes. *In re 1975 Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d 560, 564 (W.Va. 1987). This Court did not second-guess the state Supreme Court's judgment on this issue of state law. To the contrary, the Court explicitly noted that the assessments at issue "may fully comply with West Virginia law." *Allegheny*, 488 U.S. at 345.¹⁸ Thus, the distinction respondents and *amici* seek to draw rests on an erroneous assumption.

Moreover, as the *Allegheny* decision itself demonstrates, whether the state action at issue comports with state law is irrelevant to federal equal protection analysis. The *Allegheny* Court held that the Webster County assessment practices violated the Equal Protection Clause even though they apparently did not violate West Virginia law. *Id.* See also, e.g., *Lucas*, 377 U.S. at 736-37 (holding that discriminatory scheme adopted by popular referendum never-

¹⁷ See Respondents' Brief in Opposition at 11 (*Allegheny* "involved action by a State official directly in conflict with West Virginia State law requirements."); *Amici* Brief at 16.

¹⁸ Thus, respondents could not be more mistaken in asserting that "[t]his Court acted in *Allegheny Pittsburgh* to uphold the law of West Virginia, more or less acting as, the final arbiter of State law." Respondents' Brief in Opposition at 11 (internal quotes omitted).

theless violated Equal Protection Clause). Similarly, the Court has consistently held that a violation of state law does not give rise to an equal protection challenge; state action may violate state law but not offend the Equal Protection Clause. *E.g.*, *Snowden v. Hughes*, 321 U.S. 1, 10 (1944); *Nashville, Chattanooga & St. Louis Ry. v. Browning*, 310 U.S. 362 (1940).¹⁹ The Court stated the principle plainly nearly fifty years ago:

[O]fficial action [of a state] is subject to constitutional infirmity to the same but no greater extent than if the action were taken by the state legislature. Its illegality under the state statute can neither add to nor subtract from its constitutional validity. Mere violation of a state statute does not infringe the federal Constitution. *And state action, even though illegal under state law, can be no more and no less constitutional under the Fourteenth Amendment than if it were sanctioned by the state legislature.*

Snowden v. Hughes, 321 U.S. at 11 (emphasis added). Even if the actions of the Webster County assessor and Board did violate West Virginia law—and they did not—that violation would not have made their actions more susceptible to challenge under the Equal Protection Clause than if they were acting in conformance with West Vir-

¹⁹ *Accord*, *e.g.*, *Hoffman v. City of Warwick*, 909 F.2d 608, 623 (1st Cir. 1990) (fact that practice at issue was “contrary to state law did not transform an otherwise rational distinction into a violation of the Equal Protection Clause”); *Stern v. Tarrant County Hosp. Dist.*, 778 F.2d 1052, 1054 (5th Cir. 1985) (en banc) (“A decision that passes constitutional muster under the rational-basis test does not violate the equal protection clause simply because it violates a state . . . statute.”), *cert. denied*, 476 U.S. 1108 (1986); *Ortega Cabrera v. Bayamon*, 562 F.2d 91, 102 (1st Cir. 1977) (“illegality of official conduct under local law ‘can neither add to nor subtract from its constitutional validity’”) (quoting *Snowden*). See also *Archie v. City of Racine*, 847 F.2d 1211, 1216-17 (7th Cir. 1988) (en banc) (same in context of Due Process Clause), *cert. denied*, 489 U.S. 1065 (1989).

ginia law. Hence, the distinction respondents and *amici* seek to draw between *Allegheny* and this case is irrelevant.

The welcome stranger assessment provision of Proposition 13—like Webster County’s welcome stranger assessment practice—must be assessed under *federal* standards of equality and rationality, not in relation to their compliance with state law. The contrary approach advocated by respondents would federalize, indeed constitutionalize, every violation of state law.²⁰ The Court has steadfastly rejected this result.²¹

Moreover, it would permit States to immunize their unconstitutional actions by simply codifying them. The States cannot define the content of the Equal Protection Clause. To survive scrutiny, the classification drawn by the State must itself be rational. But enacting the classification into law does not make it so:

A State cannot deflect an equal protection challenge by observing that in light of the statutory classification all those within the burdened class are similarly situated. The classification must reflect pre-existing differences; it cannot create new ones that are supported by only their own bootstraps. “The Equal Protection Clause requires more of a state law than non-discriminatory application within the class it establishes.”

²⁰ As the Fifth Circuit, sitting en banc, explained:

If state law defines who is entitled to what treatment or which means to a chosen goal are rational, then all intentional violations of state law by state agencies would violate the fourteenth amendment: if the action were taken against a class it would offend equal protection . . . and if taken against an individual it would offend due process.

Stern v. Tarrant County Hosp. Dist., 778 F.2d at 1059.

²¹ *E.g.*, *DeShaney v. Winnebago County DSS*, 489 U.S. 189, 109 S.Ct. 998, 1007 (1989) (Due Process Clause “does not transform every tort committed by a state actor into a constitutional violation”); *Bishop v. Wood*, 426 U.S. 341, 349 & n.13 (1976); *Paul v. Davis*, 424 U.S. 693, 698-99 (1976).

Williams v. Vermont, 472 U.S. at 27, quoting *Rinaldi v. Yeager*, 384 U.S. 305, 308 (1966). See also *Browning*, 310 U.S. at 368 (holding that state tax law cannot “be insinuated into that meritorious conception of equality which alone the equal protection clause was designed to assure”).

Proposition 13’s welcome stranger provision must pass the same federal equal protection test applied to Webster County’s welcome stranger assessment practices—a test, as petitioner explains, it cannot survive.

CONCLUSION

The Judgment of the California Court of Appeals should be reversed and Proposition 13’s unfairly discriminatory property assessment methods declared violative of the Equal Protection Clause.

Respectfully submitted,

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In The
Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as
Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,

Respondents.

On Writ Of Certiorari To The
Court Of Appeals Of The State Of California

AMICI CURIAE BRIEF OF THE
AMERICAN PLANNING ASSOCIATION AND THE
CALIFORNIA CHAPTER OF THE AMERICAN
PLANNING ASSOCIATION IN SUPPORT OF
PETITIONER'S BRIEF ON THE MERITS

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AMICI CURIAE BRIEF OF THE AMERICAN PLANNING ASSOCIATION AND OF THE CALIFORNIA CHAPTER OF THE AMERICAN PLANNING ASSOCIATION IN SUPPORT OF PETITIONER

I. CONSENT FOR FILING

Counsel for the American Planning Association and the California Chapter of the American Planning Association (hereinafter, the "APA") have received written consent from counsel for Petitioner Nordlinger and Respondent Hahn to the filing of this *amici curiae* brief in support of Petitioner Nordlinger. Those written consents are being forwarded to the Clerk of the Supreme Court along with this brief.

II. INTEREST OF AMICI CURIAE

The APA is a non-profit membership organization whose members consist of elected and appointed public officials, planners, architects, developers and related professionals. The majority of the California Chapter's members reside and/or practice in the State of California. The California Chapter is affiliated with the national planning organization, the APA, a non-profit organization whose members are involved in planning matters nationally. The memberships of the California Chapter and the national organization number 4,679 and 26,931 respectively.

APA's members are active in community development issues at all levels of government in California, and the membership represents all interest groups concerned

with urban and regional planning. The national organization and the state chapter serve to advance sound planning at all levels of government.

Article XIII A of the California Constitution (also referred to in this brief as "Proposition 13") was adopted by the voters in 1978. The APA files this brief in support of Petitioner's challenge to the "reassessment upon sale" provisions of Section 2(a) of Article XIII A of the California Constitution (also referred to herein as the "welcome stranger" provision). Petitioner and the Amici do not challenge the validity of the 1% tax rate cap contained in Section 1(a), nor Article XIII A's other tax limitation provisions which are not relevant here.

The issue pending before this Court is of interest and concern to the APA because its members face the task of guiding community growth for the betterment of all sectors of society. City and regional planning in California is governed by each city and county's general plan. This document, required by California Government Code section 65300 *et seq.*, must describe each community's plan for growth and identify strategies for achieving statewide goals such as affordable housing and a healthy balance between jobs and housing. General plans must also set forth a program which identifies how infrastructure and services will be provided to existing parts of the community and to developing areas. Members of the APA find it increasingly problematic to achieve these goals in the post-Proposition 13 era. It is difficult for them to develop prudent land use and fiscal policies in light of the limited financial resources generated by the property tax, the

inherently unfair treatment of new buyers and the resulting growth in the use of alternative forms of public finance, such as fees.¹

Historically, the property tax served as local governments' major source of general revenue for the whole range of public services such as police and fire protection. Although local governments' revenues from the property tax have declined since the passage of Proposition 13, APA members find that local governments are still expected to provide the same services. A direct result of Proposition 13 is that newer buyers are now subsidizing longer term owners for the same public services.

APA members also now frequently confront the fact that the fiscal implications of Proposition 13, instead of sound planning policies, can drive many land use decisions. Studies of the "fiscalization" of land use by the California Senate Office of Research and academics studying local government and tax policy in California, suggest that local officials are now more likely to approve developments which are high revenue generators, such as auto malls (which are rich in sales tax revenues), over ones which are low revenue generators, such as housing.²

¹ California Senate Commission on Property Tax Equity and Revenue, *Report to the California State Senate* 48 (1991) (hereinafter the "1991 Senate Report"). A copy of this document has been lodged with the Clerk for the convenience of the Court.

² *Id.* See also, Chapman, *The Impacts of Proposition 13 on Urban Development and Land Use*, Proposition 13 A Ten Year Retrospective 15-5- (F. Stocker ed. 1991); Mischynski, *The*

(Continued on following page)

The problem can be illustrated using housing as an example. Over time, the property taxes generated by a house, limited to a 2% increase per year, cannot keep pace with the increase in the government's cost of providing services, which rises due to inflation and increasing demand.³ Local governments are now in the difficult position of approving developments contingent upon either (a) high development fees, (b) a willingness to provide subsidized services below cost, or (c) linking housing to other kinds of "profitable" development.⁴ This paradox frustrates local governments' ability to meet goals for balanced land use, infrastructure and housing affordable to all income groups, as required by state general plan law.

III. SUMMARY

In submitting this brief, the APA incorporates the Statement of Facts from Petitioner's brief. This brief will focus on points unique to the APA, whose primary concerns are in the area of taxation of residential properties. However, the Amici recognize that owners of commercial/industrial property, businesses and renters are also affected by the repercussions of Proposition 13, as discussed in Part IV.B. below.

(Continued from previous page)

Fiscalization of Land Use, 3 California Policy Choices 73 (1986). Copies of these documents have been lodged with the Clerk for the convenience of the Court.

³ 1991 Senate Report at 48.

⁴ *Id.*

Article XIII A of the California Constitution establishes that real property that existed in 1978 is assessed at its 1975 fair market value, unless later sold. At the time of sale, the property's assessment is determined by its acquisition price. A uniform tax rate of 1% is applied to the assessed value, with a result that over time, properties of equal current *value* are subject to disparate tax liability if acquired at different points in time. While providing for nominal (2%) increases in assessed value after sale, Article XIII A lacks any mechanism for bringing the assessed value of similar properties in the same class into reasonable parity over any period of time.

While ostensibly neutral in appearance, Section 2(a) has institutionalized disparate tax liability for California residents and businesses. It has created classes of winners and losers, the winners being the property owners of longest continuous ownership. Among existing taxpayers, a recent statistical sampling of owner-occupied units indicated that over 2 million California homes retained a 1975 base tax year, qualifying those owners for the lowest standard assessed value.⁵ Those owners in the first class receive this tax benefit without regard to the current value of their property, the cost of services, or the owners' ability to pay taxes. In contrast to the 2 million winners, the losers numbered at least 2.5 million. By 1988, the earlier class of home owners paid about 24% of all property taxes paid by the home owners, while the late-comers shouldered 75% of the burden.⁶

⁵ *Id.* at 33.

⁶ *Id.* at 33.

The early class of benefitted residents is currently followed by thousands of classes of late comers, each class representing the date of acquisition and the specific characteristics of the individual transaction. Moreover, this number of classes grows every day. As between these various classes, the former class receives the greatest benefits, and the newest class "enjoys" the least, until followed by later classes whose only distinction is that they bear an even greater level of tax liability. The earliest classes receive the greatest subsidy because they pay the *least for the exact same services as those that are provided* to later buyers. The later classes pay higher taxes which subsidize the costs of services to the earlier classes.⁷ Many members of the later classes never had the opportunity to be in the first class because they were too young or could not afford to own property in 1976, or they did not live in California at the time.

Between 1975 and 1989, the median-priced home in California jumped from \$41,690 to \$196,521: a 371% increase. Taking into account the annual 2% per year increase permitted by Article XIII A Section 2(b), the effective tax liability between two property owners in 1989, one of whom retained a 1975 tax base, and the other who was a recent purchaser, was \$514 and \$2,028 respectively. This represents a 1989 tax savings of \$1,514 to the

⁷ In *Nollan v. California Coastal Commission*, 483 U.S. 825, 835, n.4 (1987) this Court noted that where certain citizens are singled out to bear a burden that remedies problems, although they had not contributed to the problems more than other citizens, the State's action, even if otherwise valid, might violate either the incorporated Takings Clause or the Equal Protection Clause.

person who owned property in 1978.⁸ Absent a sale of either property, the differential treatment is perpetuated every year thereafter. If the house with the 1975 tax base sells, the new owner will have to pay the new tax, at a rate of 1% of the acquisition value at the time of sale. This automatic, arbitrary increase will occur regardless of whether the buyer has any more ability to pay than the seller who enjoyed the 1975 tax base for at least 13 years.

As a result of its members' daily experience in community planning, the APA believes that the inequities and burdens of Proposition 13 are greater and more complicated than those presented to the court by Petitioner. In her brief, Petitioner focused on the inequity experienced buying an older home in an existing neighborhood. However, the inequity experienced by the Petitioner represents only a portion of the disproportionate tax burden placed on purchasers of homes in new subdivisions. Local governments have attempted to offset the direct reduction in property tax revenue caused by Proposition 13 by shifting to alternative revenue sources in order to meet the public's demand for municipal services.⁹ These alternative revenue sources include fees and assessments. Developers of new homes are often forced to create special financing districts so that the additional fees and assessments may be charged to the new buyers and later

⁸ 1991 Senate Report, at 32, Table 7.

⁹ Cal-Tax, *Local Public Finance, Tax and Fee Explosion*, Cal-Tax Research Bulletin 1 (October, 1991). A copy of this document has been lodged with the Clerk for the convenience of the Court.

residents.¹⁰ The cumulative effect of the reassessment on sale provisions of Section 2(a), coupled with supplemental fees, special taxes or assessments, adds even more weight to the tax burden borne by later property owners. The burden is disproportionately felt by home buyers in new subdivisions.

This Court addressed a taxation practice with incidence similar to Article XIII A in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989), and determined that such a practice violated the Equal Protection Clause. That case however, involved the aberrant practice of one tax assessor, and this Court specifically left undecided the constitutionality of California's assessment practice under Article XIII A. 488 U.S. at 344-345, n.4. The traditional grounds relied upon in prior Supreme Court decisions upholding states' tax practices cannot save Section 2(a) from its inherent destructive forces, notwithstanding either its superficial appearance of uniformity or its status of enactment as statewide legislation. Section 2(a) creates too many permanent classes not based on any reasonable distinction. Furthermore, there is no method to seasonably attain rough equality in tax treatment. Finally, the public policies espoused by Respondents do not provide a rational basis for the disparities. For these reasons, based on prior holdings by this Court in cases such as *Allegheny, supra*,

¹⁰ California Debt Advisory Commission, *Mello-Roos Financing in California* 37-38 (1991). A copy of this document has been lodged with the Clerk for the convenience of the Court.

and *Zobel v. Williams*, 457 U.S. 55 (1982), Amici request this Court to invalidate Section 2(a).

IV. ARGUMENT

A. SECTION 2(a) OF ARTICLE XIII A VIOLATES THE FEDERAL EQUAL PROTECTION CLAUSE

1. Action by this Court is Necessary to Address the Inequities

This Court is the only effective forum available to address the constitutional issues raised by Article XIII A of the California Constitution. Immediately following voter approval, a challenge to Proposition 13 was presented to the California Supreme Court in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 149 Cal.Rptr. 239 (1978). In order for county tax assessors to promptly act upon their obligation to implement or ignore the new assessment procedures, the California Supreme Court issued an opinion upholding the constitutional amendment against a number of challenges, including a claim that the provision violated the federal Equal Protection Clause (Amendment XIV, Section 1). *Amador Valley* at 248, 149 Cal.Rptr. at 259. The Court upheld the measure. However, it was unequivocal about the limited nature of its ruling:

"We further emphasize that we examine only those principal, fundamental challenges to the validity of Article XIII A as a whole. In doing so we affirm and readopt an analytical technique previously used by us in adjudicating attacks upon similar enactments, in which 'Analysis of

the problems which may arise respecting the interpretation or application of particular provisions of the act should be deferred for future cases in which those provisions are more directly challenged'."

22 Cal.3d at 219, 149 Cal.Rptr. at 241 (quoting *County of Nevada v. MacMillen*, 11 Cal.3d 662, 666, 114 Cal.Rptr. 345, 347 (1974)).

The *Amador* court proceeded to examine the equal protection challenge only in the abstract, and determined that the "resolution within the framework of an actual controversy wherein the disparity is pivotal" was a separate question. *Id.* at 233, 149 Cal.Rptr. at 250. The State Court of Appeals, when it reviewed this case, misinterpreted the earlier *Amador* decision to encompass an "as applied" challenge as well, and declined to reach a different result. *Nordlinger v. Lynch*, 225 Cal.App.3d 1259, 1272-1275, 275 Cal.Rptr. 684, 691-693 (1990) (review denied February 28, 1991). The Appellate Court in *Nordlinger* also concluded that the Proposition 13 tax system was distinguishable from that in *Allegheny*, 488 U.S. 336 (1989), and that the Proposition 13 tax scheme was consistent with the equal protection principles articulated in *Allegheny*. *Nordlinger*, 225 Cal.App.3d at 1278-1279, 275 Cal.Rptr. at 695-696.

Based upon these prior holdings, and without action by this Court, the pyramid scheme of tax liability created by Article XIII A, Section 2(a) will continue ad infinitum. Earlier property owners at the top of the pyramid will continue to depend on later buyers at the bottom to

shoulder an ever-greater share of the costs of public services and infrastructure that serve *everyone* in the community.

2. Section 2(a)'s Method For Creating Different Classes Of Taxpayers Does Not Survive Scrutiny Under The Rational Basis Test.

a. The Unlimited Number of Classes Created by Section 2(a) is Not Permissible.

Section 2(a) violates the Equal Protection Clause because it separates property owners into an ever-expanding number of classes and determines the tax liability differently for each distinct class. Such an approach, one of unlimited class creation, was rejected by this Court in *Zobel v. Williams*, 457 U.S. 55, 64 (1982).

By Respondent's own admission, Section 2(a) has created over 5,000 different classes based simply on date of acquisition. In reality however, many more classes have been added and the numbers continue to expand due to the growing number of permutations allowed by the original statute and subsequent amendments. For example, Section 2(g) of Article XIII A, added by Proposition 58 in 1986, exempts transfer within the immediate family from the change-in-ownership requirements of Section 2(a). Thus, family homes and businesses can be passed in perpetuity, immune from reappraisal. The tax liability will remain the same without regard to the acquisition price, the cost of services provided to the property or the ability of the owners to pay. Similar immunities exist for transfers among joint tenants.¹¹ Also, Section

¹¹ Cal. Rev. & Tax Code § 65(b), (d).

2(h) permits residents over 55 years old who owned property in 1978 to sell that property, buy another property and *transfer* the low 1975 assessment to their new residence – again without regard to the acquisition price, the cost of providing public services to the new residence or the owners' ability to pay.

Numerous arbitrary exemptions also apply to non-residential transfers. For example, if property is acquired by purchase of stock in the entity holding title to the property, a single individual or entity must acquire over 50% of the stock in order to trigger a reassessment.¹² But, if a corporation reorganizes, a 1% difference in the stock holdings before and after the reorganization will trigger reappraisal of 100% of the real property held by the reorganized corporation.¹³

Thus, there is endless creation of classes, each class determined by the date of acquisition, the acquisition price and the specific circumstances of the individual transaction. Frequently, the most important variable in the equation is whether someone in the transaction owned the property in 1978. This one simple fact can act to keep the property tax abnormally low. This is precisely the type of scheme that this Court condemned in *Zobel v. Williams*, 457 U.S. 55 (1982). As Chief Justice Burger stated when he wrote for this Court:

If the states can make the amount of a cash dividend depend on length of residence, what would preclude varying university tuition on a

¹² Cal. Rev. & Tax Code § 64(c).

¹³ Cal. Rev. & Tax code § 62(a).

sliding scale based on years of residence – or even limiting access to finite public facilities, eligibility for student loans, for civil service jobs, or for government contracts by length of domicile? *Could states impose different taxes based upon length of residence?* Alaska's reasoning could open the door to state apportionment of other rights, benefits, and other services according to length of residency. *It would permit the states to divide citizens into expanding numbers of permanent classes. Such a result would be clearly impermissible.*

457 U.S. at 63-64 (emphasis added).

Just as in *Zobel*, Proposition 13 creates an ever-expanding number of classes, based on "length of residency." Also, as in *Zobel*, long-time owners under Proposition 13 are conferred the benefit of subsidized public services based purely on their length of residence, and new buyers can never achieve the same benefit. These results are clearly impermissible.

b. The Class Distinctions of Section 2(a) Are Not Reasonable.

This Court has repeatedly determined that a state tax law is not arbitrary even if it "discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a *reasonable* distinction, or difference in state policy and [is] not in conflict with the Federal Constitution." *Kahn v. Shevin*, 416 U.S. 352, 355 (1974), citing *Allied Stores v. Bowers*, 358 U.S. 522, 528 (1959) (emphasis added).

Based on the standard described above, this Court has upheld distinctions between individuals and corporations (*Lehnhausen v. Lake Shore Auto Part Co.*, 410 U.S. 356, 365 (1975)); between sizes of corporations (*Fox v. Standard Oil Company of New Jersey*, 294 U.S. 87, 100 (1935)); between widows and widowers (*Kahn, supra*); and between utilities and other business units (*New York Rapid Transit Corp. v. New York*, 303 U.S. 573, 579 (1938)). There is no doubt that Proposition 13 could have followed those classifications or created similar new classes with different attendant tax liabilities using *reasonable* distinguishing features such as: differences between vacant and developed lands; residential and commercial properties; single family and multifamily units; or relative size of parcels, combined with availability of improvements and relative current economic values.

Simply stated, Section 2(a) operates without any "*reasonable* distinction or difference." *Allied Stores v. Bowers*, 358 U.S. 522, 528 (emphasis added). There is *no* connection between costs of providing services to properties, the owners' ability to pay and the tax assessment. Even the acquisition price does not determine the tax assessment if the transaction falls into one of the Proposition 13 exceptions that favor 1978 owners, such as the Section 2(h) provision that allows 1978 owners who are over 55 years old to transfer the low 1975 assessment to a new residence. Thus, distinctions between tax burden borne by different classes of property owners are not based on any reasonable consideration of difference or policy. Because Proposition 13 contains no such reasonable distinctions, it violates the Equal Protection Clause. *Brown-Forman Co. v.*

Kentucky, 217 U.S. 563, 573 (1910), cited in *Allegheny, supra*, 488 U.S. 336, 344.

c. Section 2(a) Does Not Provide Seasonable Attainment of Rough Equality in Tax Treatment.

Proposition 13 fails to provide "seasonable attainment of a rough equality in tax treatment of similarly situated property owners." *Allied Stores v. Bowers*, 358 U.S. 522, 526-527, cited in *Allegheny, supra*, 488 U.S. 336, 343. Article XIII has been creating assessment disparities for the past 13 years, and there is no mechanism in Article XIII to ever bring similarly situated properties and owners into rough equality. Proposition 13 supporters claim that the provisions in Article XIII A allow taxes to be raised according to a formula that somehow helps it to seasonably attain rough equality under the Equal Protection Clause. This argument is transparent. The fact that a 2% increase is permitted, does not come close to meeting the requirement that rough equality in tax liability be attained over a reasonable period of time. Disparities between recent buyers and long-term owners have already reached 13:1 on some areas of California, and projections indicate that the differential will rise to at least 26:1 within 10 years if the "welcome stranger" provision in Section 2(a) is not struck down by this Court. *Nordlinger v. Lynch*, 225 Cal.App.3d 1259, 1269, 275 Cal.Rptr. 684, 689 (1990).

Also, although Sections 3 and 4 of Article XIII A supposedly supply an internal mechanism to raise taxes to spread increased costs of government services, they

require a "super majority" vote in order to levy any new state or local tax increases. These sections also forbid new ad valorem taxes on real property. By imposing this two-thirds voting requirement, the drafters of Proposition 13 hoped to restrict the ability of local governments to impose new taxes in order to replace the property tax losses created by Proposition 13's new tax scheme. In practice, the two-thirds vote has deterred the adoption of taxes to provide infrastructure and services in existing areas.¹⁴ For example, the Mello-Roos Community Facilities Act of 1982, California Government Code section 53300 *et seq.* permits local governments to adopt a special tax to finance public facilities and services. This tax is hardly ever used in existing areas because of the two-thirds vote requirement. However, in areas that have not yet developed, the tax can be imposed by the landowner/developer before the residents move in. A study by the California Debt Advisory Commission indicates that of 132 Mello-Roos districts recently created, all but five were used for vacant land by the landowner/developer.¹⁵

d. None of the Public Policies Espoused by the Respondents and Authors of Proposition 13 Justify Its Unfair Impacts and the Policies Do Not Withstand Rational Basis Scrutiny.

Proposition 13 proponents claim that the welcome-stranger provision of Article XIII A reflects ability to pay.

¹⁴ California Debt Advisory Commission, *Mello-Roos Financing in California* 1 (1991).

¹⁵ *Id.* at 13, n.1.

In fact, the scheme was never designed to impose property taxes with respect to ability to pay or cost of services. As fully explained in Petitioner's brief, first time home buyers in modest neighborhoods are now paying property taxes and fees far higher than long-time homeowners in wealthy areas. The *only* distinguishing factor is date of purchase. Proponents of Proposition 13 do not explain what is the characteristic of new buyers that justifies their disparate treatment. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 453 (1985).

Proponents of the welcome-stranger provision also allege that its "predictability" justifies gross disparities in tax payments by similarly situated property owners. *Predictability is not the benchmark of fairness or equal treatment.* Taxpayers and the State may have a legitimate interest in "certainty," but this does not justify assigning similarly situated taxpayers different tax burdens simply based on the acquisition *date* and *price* at which they purchased or merely because one taxpayer received his or her home through a transfer that is exempt from Proposition 13's reassessment trigger. There is simply no reason why recent buyers must pay higher taxes in order to achieve predictability. Such an explanation is necessary to pass judicial scrutiny under the Equal Protection Clause. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 453 (1985).

Another justification offered by the Proposition 13 authors is that forcing newer buyers to shoulder more of the tax burden is necessary in order to guarantee a

constant revenue stream for local government.¹⁶ Again, Respondents and Proposition 13 advocates can not explain what characteristic of new buyers justifies making them pay a higher proportion of the cost of public services and infrastructure than their longer-term neighbors. They also have not explained what characteristic of long-term owners entitles them to a subsidy. Plainly and simply, there is no rational basis for the distinction between the classes of taxpayers.

B. THE TAX INEQUITIES RESULTING FROM SECTION 2(A) ARE FURTHER COMPOUNDED BY THE ACTS OF LOCAL GOVERNMENTS AS THEY SEEK SUBSTITUTE REVENUE SOURCES.

As previously noted, the direct result of Section 2(a) is disparate tax treatment of similarly situated properties. This well documented gap will only widen with the passage of time unless checked by this Court. The difference in tax burdens carried by recent purchasers compared to earlier purchasers is further compounded when reviewed in conjunction with the other revenue actions of local governments.

In California, property tax is not the sole source of revenue to cities and counties. Rather, there is a wide range of sources, including the subsidies and reimbursements by state and federal government. Of those which are adopted and controlled by local government, the

¹⁶ See, *Brief Amici Curiae* of Howard Jarvis Taxpayers Association and Paul Gann's Citizens Committee in Opposition to Petition for Certiorari, at 4, 7-8, 16.

major revenue sources are general property taxes, sales tax, property transfer and transient lodging tax, business license tax, utility user taxes, service charges and licenses, permits and franchises. In 1977-1978, the predominant source of locally generated income to local governments was the general property tax, the tax now specifically limited by Section 2(a) of Article XIII A.¹⁷ Although Proposition 13 caused a substantial reduction in local governments' historic revenue source, local governments have responded in part by shifting to substitute funding methods. The substitute sources that compound the discriminatory burden of Article XIII A are in the areas of special taxes, benefit assessments and development fees.

This drive for new non-property tax revenues is a function of cities and counties responding to constituent demands for services. Not surprisingly, California voters' appetite for services did not diminish along with their willingness to pay property taxes. Even the disproportionately high property taxes paid by recent purchasers do not make up the difference between the costs of services and the amount of revenue raised by the property tax. The desire for services, coupled with underfunded state and federal mandates, have left local governments with no choice but to seek alternative funding. For various reasons, the brunt of the new revenue techniques, whether taxes, fees or assessments, is borne by the residents of developments built after passage of Proposition 13. Thus, not only do recent purchasers enjoy the "privilege" of paying higher Section 2(a) property taxes, they

¹⁷ Cal-Tax, *Local Public Finance, Tax and Fee Explosion*, Cal-Tax Research Bulletin 4 (1991).

often pay additional fees, special taxes and assessments as well.¹⁸

Fees can be a deterrent to affordable housing, particularly in new developing areas, because they are usually imposed on a per-unit basis, not as a percentage of the value of the home. One consequence of high fees is that developers sometimes opt to build housing only for the higher end of the single-family market where fees can be absorbed more easily as opposed to multi-family projects (usually rentals). A recent study by the U.S. Department of Housing and Community Development indicates it is easier for developers to pass the fees along to home buyers than to renters. This preference can have a dampening effect on the development of multi-family housing.¹⁹

¹⁸ Ironically, after this Court issued its decision in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), the California legislature adopted section 66000 *et seq.* of the California Government Code (also known as "AB 1600"). Before local governments can impose fees, this legislation requires them to conduct exhaustive studies and show a specific nexus between the demand for public services and infrastructure created by the new unit, the cost of the service and/or infrastructure, and the fee charged to the home buyer. In contrast, the amount of the property tax imposed on the new home buyer by Section 2(a) undergoes no such scrutiny.

¹⁹ U.S. Department of Housing and Community Development, "Not In My Backyard" *Removing Barriers to Affordable Housing*, Report to President Bush and Secretary Kemp by the Advisory Commission on Regulatory Barriers to Affordable Housing 2-11 (1991) (citing Ferguson, *How Impact Fees Affect Residential Development* (January, 1991). Prepared for the Urban Land Institute. Draft.) A copy of this document has been lodged with the Clerk for the convenience of the Court.

Three recent studies chronicle the shift to fees, special taxes and assessments. The first study is by Cal-Tax, a non-profit corporation founded to advance further understanding of California's system of taxation.²⁰ Cal-Tax's study shows that in comparing 1988/89 to a base year of 1977/78 (the year preceding Article XIII A's enactment), parcel taxes and benefit assessments (both exempt from Proposition 13) imposed by cities, counties and special districts, have increased 785%.²¹ On a per capita basis, these taxes and assessments have jumped from \$1.84 to \$10.73 during the ten year span of the Cal-Tax study. Most often, these assessments or special taxes are required by local government in conjunction with approval of new real estate developments. Another recent study, cited above, by the California Debt Advisory Commission, shows that debt financing for public facilities carried by all Mello-Roos districts now totals \$3.2 billion. Most of this debt has been imposed on new developing areas and buyers are expected to assume much of the burden when they move into new subdivisions.

A third study that addresses development fees was recently compiled by the Building Industry Association of Northern California.²² It also clearly demonstrates

²⁰ Cal-Tax, *Local Public Finance, Tax and Fee Explosion*, Cal-Tax Research Bulletin (October, 1991).

²¹ *Id.* at 3, Table 1.

²² Building Industry Association of Northern California, *Development Fee Survey for the San Francisco Bay Region* (1991). A copy of this document has been lodged with the Clerk for the convenience of the Court.

the unmistakable shift by local governments to alternative funding sources. In this case, the focus of inquiry is on residential development fees, which are those fees imposed by local government on construction of new homes. This survey examined the probable fee structure to be encountered by a developer processing a 25 acre development, consisting of 100 single family detached homes with four different models. The survey area consisted of fifty-six cities in the San Francisco/Oakland greater metropolitan area.²³ The study results graphically document the burden shifting to the new home buyer. This study shows average development fees per home²⁴ for the three survey periods of 1981, 1987, and 1991 amounting to \$4,264, \$9,220, and \$13,763, respectively; a 223% increase from 1981-1991.²⁵ By practice, existing residents are exempt from these one time fees, since the fees apply only to new construction.²⁶

²³ Located on a 6000 square foot lot, each hypothetical home consists of three bedrooms and two baths with 1500 square feet of living space. Each prototype also includes a 400 square foot garage.

²⁴ Individual fees that were estimated for the prototype homes are in the following categories: Planning; Building; School Impact; Traffic Impact/Parks-Recreation-Open Space; Fire and Police; Affordable Housing; General Growth; and Utility.

²⁵ Building Industry Association of Northern California, *News Release* (August 14, 1991). A copy of this document has been lodged with the Clerk for the convenience of the Court.

²⁶ Many of the studied fees, but not all, would also apply to an individual seeking to construct a single home on an existing parcel of land.

As the above studies indicate, the inequities created by the reassessment on sale provisions of Proposition 13 are not limited to the payment of the property tax only. California cities and counties have resorted to alternative revenue sources to compensate for the revenue decreases caused by Proposition 13. A significant burden in the form of special taxes, assessments and fees is transferred to residents of developments built in the post Proposition 13 era. New homebuyers are incurring the extra burden of this revenue shift, adding even more barricades to mobility and affordable housing on top of the direct penalty placed on new residents as a consequence of Section 2(a).

V. CONCLUSION

Petitioner Nordlinger has presented compelling documentation of the tax inequities presented by Section 2(a) of Article XIII A of the California Constitution. No party to this petition can dispute this conclusion. It is also well documented that the burden placed on home purchasers in new real estate developments approved after Proposition 13 has risen beyond the increased property tax liability imposed by Section 2(a).

Home buyers so burdened have no remedy under state law. The straight-jacket valuation and assessment methodology mandated by Section 2(a) locks a newer purchaser into permanent disparity, and lacks any means for seasonable closure of the tax gap. Theoretically, a taxpayer may avoid the inequitable treatment by never changing tax status. In reality, it is difficult or impossible

to avoid the discriminatory effect. Public policy justifications espoused by Proposition 13 advocates, such as tax certainty, are achievable without penalizing those who elect or are forced to purchase a new home or business property. Amici find that the inequities created by Proposition 13 are growing. As California moves into the twenty-first century, it will become increasingly difficult for local governments to conduct sound land use planning and provide public services and facilities on a fair basis. It is for the above reasons that Amici request this Court to invalidate Section 2(a) of Article XIII A of the California Constitution.

Dated: December 23, 1991

Respectfully submitted,

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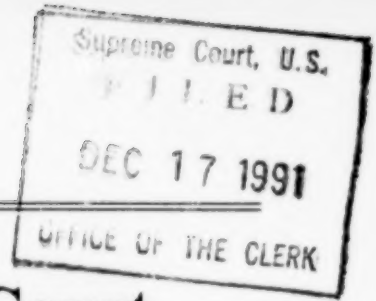
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No. 90-1912



In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,
Petitioner,

VS.

KENNETH HAHN, in his capacity as Tax
Assessor for Los Angeles County and the
COUNTY OF LOS ANGELES,
Respondents.

**BRIEF OF AMICUS CURIAE
CALIFORNIA ASSESSORS' ASSOCIATION
IN SUPPORT OF NEITHER PARTY**

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I

STATEMENT OF INTEREST AND SUMMARY OF ARGUMENT

A. Statement of Interest

The California Assessors' Association (hereinafter "Association") is a professional organization comprised of the duly elected Assessor from each of California's fifty-eight counties. The office of County Assessor is created by Article XI, Sections 1 and 4 of the California Constitution. The Assessor of each county is responsible for the assessment of all taxable property in the county except property which appears on the utility roll assessed by the state. California Revenue and Taxation Code Section 405. Assessors are county officers who exercise independent judgment

in the discharge of their duties. Petitioner and Respondents have consented to the filing of an Amicus Curiae brief by the Association. The Letters of Consent have been filed with the Court.

If Section 2(a) of Article XIII A of the California Constitution (hereinafter "Proposition 13") is declared to be unconstitutional, the members of the Association will be required to adopt an entirely different method of property assessment than that which has existed in California since 1978. This could require the reassessment of almost every parcel of real property in the entire state of California, at least once, and possibly many times in a starkly limited time frame.

The California State Board of Equalization has determined that there were 9,787,887 parcels of real property in California in the 1989-1990 fiscal year.¹

A myriad of collateral impacts would follow in the wake of this administrative maelstrom including refund determinations, escape assessments, assessment appeals, valuation of property constructed during the interim, and supplemental assessments. All of these tasks and many others, including billing and collection, would be required to be completed almost immediately, while current assessment requirements continued. It would be comparable to rebuilding an engine while it is running.

Inasmuch as the full force of this epochal transformation would impact the members of the Association, they are understandably concerned and will be instantly overwhelmed by an invalidating decision. Furthermore, they are the public officials from whom members of the community will seek advice and guidance, during the period of uncertainty and concern which will follow an extraordinary transition in the current method of property taxation. Finally, County Assessors are uniquely qualified to inform the Court of the technical problems engendered by the issues it will consider.

¹ California State Board of Equalization, A Report on Budgets, Workloads, and Assessment Appeals Activities in California Assessors' Offices, 1989-90 (May 1991). This report has been lodged with the Court.

B. Summary of Argument

The Association supports neither party. Its interest is limited to the manner in which the Court's decision will be implemented. It urges the Court to consider the monumental reverberations which will ensue from a declaration of invalidity, not for the purpose of influencing the Court's decision on the merits, but so that the Court will afford the California Courts, Legislature, and County Assessors a reasonable opportunity to develop orderly, rational, and equitable systems to comply with the Court's decision, if it invalidates Proposition 13.

II

ARGUMENT

These points are not arguments in the sense that they constitute reasons to support the position of either party. Instead, on the basis of the Association's neutrality, they detail the effects of an invalidating decision in as objective a manner as possible to assist the Court to determine timing and means of implementation, if the Court elects to do so.

A. Effects of Retroactivity

The law concerning the retroactivity or prospectivity of Supreme Court decisions is obviously in the process of refinement. *McKesson v. Div. of Alcoholic Beverages & Tobacco*, 110 S.Ct. 2238, 110 L.Ed. 2d 17 (1990); *American Trucking Associations, Inc. v. Smith*, 110 S.Ct. 2323, 110 L.Ed. 2d 148 (1990); *James B. Beam Distilling Co. v. Georgia*, 111 S.Ct. 2439, 115 L.Ed. 481 (1991). This case is similar to *American Trucking* insofar as it involves reliance on Proposition 13 for 13 years, major administrative disruption, and the potential of serious inequities. It differs from the pure refund cases because it involves recomputation of the taxable value of property, rather than invalidation of an entire tax.

The issue is further complicated by the procedural posture of this case. It comes to this Court on a demurrer to a complaint for declaratory relief (which may be procedurally flawed if California Revenue and Taxation Code 4808 does not apply) and for the

refund of taxes for a single year. *Nordlinger v. Lynch*, 225 Cal.App.3d 1259 (1990).

Prior to the enactment of Proposition 13 by voter initiative in 1978, Article XIII, Section 1 of the California Constitution provided that all property "be taxed in proportion to its value." This section was not repealed by the initiative. If the Court sweeps away Proposition 13 because it is deemed unconstitutional, its assessment provisions will cease to exist, and the former state constitutional provisions will once again apply. This means that, absent any qualification by the Court, County Assessors will be legally obliged to reassess millions of parcels of real property and increase property assessments up to 1992 valuations, based on current market data. Assuming this could be accomplished, it would result in an increase in property taxes estimated by the California Legislature to be between **11 to 13 Billion dollars** for the 1992-1993 tax year.²

In addition, County Assessors have a constitutional duty to levy "escape assessments" in cases of underassessment. This duty cannot be abridged by the Legislature. *Bauer-Schweitzer Malting Co. v. City & County of San Francisco*, 8 Cal. 3d 942 (1973); *Hewlett-Packard Co. v. County of Santa Clara*, 50 Cal.App.3d 74 (1975). In fact, Assessors are liable on their bonds for failure to impose escape assessments. California Revenue and Taxation Code Section 1361. California law presently provides that escape assessments shall be imposed for four previous years. California Revenue and Taxation Code Section 532. These requirements could easily entail as much as **30 Billion dollars** in back tax liability, with attendant public turmoil, outrage, and serious hardship to people who could not afford, or are unable to pay, unanticipated major tax increases.

²Assembly Office of Research for the Assembly Revenue and Taxation Committee, Legal Challenges to Proposition 13: Implications for California (October 1991) p. 24; Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate (Pursuant to State Resolutions 42 and 8) (June 1991) p. 4. These reports have been lodged with the Court.

California requires an individual appraisal for each and every parcel of property in support of its assessment. California Revenue and Taxation Code Sections 401 et seq. The appraisals of many of these properties, such as skyscrapers, factories and movie studios, often require months and involve extremely sophisticated analyses. Sometimes even the appraisal of a single family house mandates extensive study and research. As indicated above, there are 9,787,887 parcels of real property in California, most of which will be required to be reappraised.

The total number of permanent employees in all of the Assessors offices in the state is 5,268, of which only 1,736 are property appraisers.³

This means, on the basis of simple arithmetic, that each public appraiser would be required to reappraise at least 5,638 properties to bring the Assessment Roll up to current market value, compared to a current average annual workload of 750 parcels per appraiser. Even with a swift response by the Legislature and the provision of adequate resources, it would take years to reassess all of these properties and institute an ad valorem assessment system. It is unlikely that Assessors can catch up in this decade.

The problem worsens. Property owners in California are entitled to appeal the amounts of their assessments to Assessment Appeals Boards. California Revenue and Taxation Code Section 1601. Unless these appeals are heard within two years, the property owner's value assertion is binding. California Revenue and Taxation Code 1604 (c). Many of these hearings are mini-trials involving expert witnesses, legal counsel, cross-examination and argument. Members of the Assessors' staffs are required to defer their assessment duties in order to attend and testify in support of their appraisals. Assuming the disparities in values contained in Appendix E to the Petition for Writ of Certiorari are correct, appraisals would often increase assessments ten fold or more. An avalanche of assessment appeals would follow inexorably.

³California State Board of Equalization, A Report on Budgets, Workloads, and Assessment Appeals Activities in California Assessors' Offices, 1989-90 (May 1991) p. 2.

Although this scenario is dire in the extreme, there are many strategies which may be employed to ameliorate these problems. The reports cited previously in footnote 2 contain numerous suggestions for legislative response. County Assessors can and will, as they did when Proposition 13 was enacted, discharge their duties in a comprehensive and efficient manner, but they and the Legislature must be afforded some leeway to prevent paralysis of the property tax system in California if Proposition 13 is summarily vacated with immediate and retroactive effect.

B. Effects of a Tax Rollback

In *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336, 346, 109 S.Ct. 633, 102 L.Ed. 2d 688 (1989), the Court stated "A taxpayer in this situation may not be remitted by the State to the remedy of seeking to have assessments of the undervalued property raised." This statement, although not necessarily applicable here, raises the unlikely possibility that the Court might be urged to roll back property assessments to their 1975 levels and authorize corresponding tax reductions and refunds. This would result in a yearly reduction in property tax revenues of as much as **10 Billion Dollars**.⁴

Not only would this have a catastrophic impact on local governments providing essential services such as education, police and fire protection, and health, which are already reeling under disabling deficits, but a rollback would create a corollary administrative monstrosity for Assessors who would be required to recalculate the entire roll back to 1975-76 values. Although many of these values could be found in prior records, Assessors would have to establish values, for improvements made to the properties, parcels created during the last thirteen years, and structures and property types that did not exist in 1975. For example, it would require painfully tortured calculations to hypothecate the value of a building constructed in 1990 back to 1975. The ramifications are infinite.

⁴ Assembly Office of Research for the Assembly Revenue and Taxation Committee, *Legal Challenges to Proposition 13: Implications for California* (October 1991), p. 25.

To place yet another straw on the camel's back, California law allows taxpayers to claim refunds for four previous years and recover interest on refunds.⁵ California Revenue and Taxation Code Section 5097. Local government in California would be financially eviscerated and the calculations and paperwork, already unmanageable, would be quadrupled by the necessity to recalculate assessed values for the periods claimed in the refunds.

In the dissent in *James B. Beam Distilling Co. v. Georgia*, supra, 111 S.Ct. 2439 at p. 2455, Justice O'Connor deplores the potential liability of the State of Georgia in the amount of 30 Million dollars. In this case the potential liability is literally one thousand times greater.

C. Alternative Remedies

As daunting as the problems of rewriting thirteen years of taxation history in California may be, they are capable of solution given reasonable time and opportunity to address them. If this Court invalidates Proposition 13 and directs the State to adhere to the *Allegheny Pittsburgh Coal* standard of "the seasonable attainment of a rough equity in tax treatment of similarly situated property owners" (488 U.S. 336 at 343), this objective can be achieved, but it will require considerable breathing room, and a realistic schedule.

As the reports cited previously in footnote 2 demonstrate, both the California Senate and Assembly have studied remedial measures in impressive detail, and have garnered much of the data necessary to legislate equitable solutions to this issue. Similarly, the members of the California Assessors' Association and the California State Board of Equalization have devoted prodigious

⁵ For example, *R. H. Macy & Co. Inc.*, although it dismissed its petition to this Court, *R. H. Macy & Co. Inc. v. Contra Costa County* (No. 90-1603) (Petition dismissed June 23, 1991), has nonetheless filed extensive refund claims for the 1985-86, 1986-87, 1987-88, 1988-89, 1989-90 and 1990-91 tax years predicated upon the outcome of this case. A copy of the face sheet of one such claim is attached as APPENDIX B.

efforts to an evaluation of the means by which they can respond to an invalidating decision effectively and fairly.

Conversely, this Court, by definition, does not have the capacity, nor would it wish to attempt to unscramble the intimidating conundrums posed by either roll back or roll forward of almost ten million property assessments. The parties, in recognition of the stunning implications of an invalidation decision have not sought explicit relief. Although emphasis on the extensive practical effects of a decision may conflict with the symmetry of constitutional principle, it is possible for the Court to accommodate both concepts by allowing some respite during which inexorable realities can be resolved, or at least accommodated.

III

CONCLUSION

The Association respectfully urges that this Court, if it determines to invalidate Proposition 13 and does not provide for prospectivity, refer the case back to the California Courts to determine the manner in which the decision may be implemented as was done in *American Trucking Associations*, *Allegheny Pittsburgh Coal*, and *Mc Kesson*.

This is the only way that the Gordian knot created by thirteen years of property assessment under Proposition 13 can even begin to be unraveled and massive fiscal dislocations calculated and allocated equitably.

Respectfully Submitted,

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APPENDIX A

California Revenue and Taxation Code Section 401:

§ 401. Assessed value

Every assessor shall assess all property subject to general property taxation at its full value.

California Revenue and Taxation Code Section 405:

§ 405. Annual assessment; jointly assessed property

(a) Annually, the assessor shall assess all the taxable property in his county, except state-assessed property, to the persons owning, claiming, possessing, or controlling it on the lien date.

The assessor may assess the property on the secured roll to the person owning, claiming, possessing, or controlling it for the ensuing fiscal year.

(b) The assessor may assess all taxable property in his county on the unsecured roll jointly to both the lessee and lessor of such property.

(c) Notices of assessment and tax bills relating to jointly assessed property on the unsecured roll shall be mailed to both the lessee and the lessor at their latest addresses known to the assessor.

California Revenue and Taxation Code Section 532:

§ 532. Limitations

Any assessment to which the penalty provided for in Section 504 must be added shall be made within six years after July 1 of the assessment year in which the property escaped taxation or was underassessed. Any other assessment made pursuant to Article 3 (commencing with Section 501) of this chapter, or pursuant to this article shall be made within four years after July 1 of the assessment year in which the property escaped taxation or was underassessed.

California Revenue and Taxation Code Section 1361:

§ 1361. Escaped property; liability on bond

The assessor and his sureties are liable on his official bond for all taxes on property which is unassessed through his wilful failure or neglect.

California Revenue and Taxation Code Section 1601:

§ 1601. County board, definition; notice of period for acceptance of protests, time and place of meeting to equalize assessments

(a) For purposes of this article, "county board" shall mean a county board of supervisors meeting as a county board of equalization or an assessment appeals board.

(b) In counties of the first class, the clerk shall give notice of the time the county board will meet to equalize assessments by publication in a newspaper.

(c) In all other counties, immediately upon delivery of the roll to the auditor, the clerk shall give notice of the period during which assessment protests will be accepted, the place where they may be filed, and the time the county board will meet to equalize assessments by publication in a newspaper, if any is printed in the county, or, if none, as directed by the board of supervisors.

California Revenue and Taxation Code Section 1604(c):

§ 1604. County board; annual meeting; time; effect of untimely hearing

* * *

(c) If the county assessment appeals board fails to hear evidence and fails to make a final determination on the application for reduction in assessment of property within two years of the timely filing of the application, the taxpayer's opinion of market value as reflected on the application for reduction in assessment shall be the value upon which taxes are to be levied

for the tax year covered by the application, unless the taxpayer and the county assessment appeals board mutually agree in writing to an extension of time for the hearing. The reduction in assessment reflecting the taxpayer's opinion of market value shall not be made, however, until two years after the close of the filing period during which the timely application was filed. Further, this subdivision shall not apply to applications for reductions in assessments of property where the taxpayer has failed to provide full and complete information as required by law or where litigation is pending directly relating to the issues involved in the application. This subdivision is only applicable to applications filed on or after January 1, 1983.

* * *

California Revenue and Taxation Code Section 4808:

§ 4808. Actions challenging legality or constitutionality of tax or assessment; declaratory relief; time limitation; parties; payment of tax; application of section

Notwithstanding any provision of law to the contrary, any taxpayer may, no later than 30 days after the delinquency date of a property tax bill or any installment thereof, seek declaratory relief in the superior court in the county in which the property is located alleging that the locally assessed property taxes have been illegally or unconstitutionally assessed or collected or are to be so assessed or collected.

Any action alleging an illegal or unconstitutional method of valuation or similar matter shall name as respondent the assessor of the county in which the property is located. An action alleging an unconstitutional or illegal tax rate shall name as respondent the auditor-controller of such county. In the event the action involves the validity of a rule or regulation adopted by the State Board of Equalization, the board shall be named as a respondent. The relief granted pursuant to this section shall be limited to a declaration that the taxes assessed or collected or to be assessed or collected are unconstitutional or otherwise legally invalid.

This section shall not be interpreted to allow a taxpayer to postpone payment of property taxes pending the decision of the court. All assessment and collection provisions of this division shall continue to apply to properties affected by this section.

This section shall be applicable only in instances where the alleged illegal or unconstitutional assessment or collection occurs as the direct result of a change in administrative regulations or statutory or constitutional law that became effective not more than 12 months prior to the date the action is initiated by the taxpayer.

The procedure for obtaining a declaratory relief judgment under this section shall be the same as that used to obtain a writ of mandate.

California Revenue and Taxation Code Section 5097:

§ 5097. Claims; verification; filing time

(a) No order for a refund under this article shall be made, except on a claim:

(1) Verified by the person who paid the tax, his or her guardian, executor, or administrator.

(2) Filed within four years after making of the payment sought to be refunded or within one year after the mailing of notice as prescribed in Section 2635, or the period agreed to as provided in Section 532.1, whichever is later.

(b) An application for a reduction in an assessment filed pursuant to Section 1603 shall also constitute a sufficient claim for refund under this section if the applicant states in the application that the application is intended to constitute a claim for refund. If the applicant does not so state, he or she may thereafter and within the period provided in paragraph (2) of subdivision (a) file a separate claim for refund of taxes extended on the assessment which applicant applied to have reduced pursuant to Section 1603 or Section 1604.

(c) If an application for equalization of an escape assessment is filed pursuant to Section 1603, a claim may be filed on any

taxes resulting from the escape assessment or the original assessment to which the escape relates within the period provided in paragraph (2) of subdivision (a) or within 60 days from the date the board of equalization makes its final determination on the application, whichever is later.

B-1

APPENDIX B

R. H. Macy & Co., Inc.

Eleven Penn Plaza • New York, NY 10001-2088

December 3, 1991

Certified Mail #P 423 203 054

Corporate Taxes
Sixth Floor

Board of Supervisors
County of Marin
Room 310, Civic Center
San Rafael, CA 94903

Re: R. H. Macy & Co., Inc.

Parcel No. - 24-032-22

For the Tax Roll of - 1985/86 Suppl.

1986/87, 1987/88, 1988/89,

1989/90 and 1990/91 Regular

Dear Sir:

Enclosed is a claim for refund for the above-named entity and years.

This claim primarily involves the constitutionality of the provisions of Article XIII A of the California Constitution. Inasmuch as the claim is dependent upon the outcome of pending litigation, we understand that the claim will not be denied until the litigation in a final appellate court decision determines the matter one way or the other. If that is not the case, we would appreciate an opportunity to discuss the handling of this claim *prior* to any denial.

B-2

Would you be kind enough to confirm receipt of the claim by signing the enclosed copy of this letter and returning it in the envelope provided. If you need anything further, please contact the undersigned.

Very truly yours,

DAN JORDAN
Daniel F. Jordan
Director of Property Taxes

DFJ/tm
Enclosure

cc: Charles R. Ajalat

ACKNOWLEDGEMENT

Claim for Refund Received and timely filed.

COUNTY OF _____ By _____

(15)
No. 90 - 1912

Supreme Court, U.S.

F I L E D

DEC 18 1991

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

**KENNETH HAHN, in his capacity
as Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,**

Respondents.

**On Writ Of Certiorari To The Court Of
Appeal Of The State Of California**

**BRIEF OF AMICUS CURIAE
INTERNATIONAL ASSOCIATION OF ASSESSING
OFFICERS IN SUPPORT OF PETITIONER**

JAMES F. GOSSETT

Counsel of Record

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Suite 3550

Chicago, Illinois 60606

(312) 263-3001

*Attorney for Amicus Curiae
International Association
of Assessing Officers*

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity
as Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,

Respondents.

On Writ Of Certiorari To The Court Of
Appeal Of The State Of California

BRIEF OF AMICUS CURIAE
INTERNATIONAL ASSOCIATION OF ASSESSING
OFFICERS IN SUPPORT OF PETITIONER

INTEREST OF AMICUS CURIAE
(AND REPRESENTATION
AS TO CONSENT FOR FILING)

Counsel for the International Association of Assessing Officers ("IAAO") has received written consent from counsel for the Petitioner and counsel for the Respondents to

the filing of an amicus brief by IAAO. Those written consents are being forwarded to the Clerk of the Supreme Court with this brief.

The International Association of Assessing Officers is a tax-exempt nonprofit educational membership organization under Section 501(c)(3) of the Internal Revenue Code, dedicated to improving the administration of the property tax and to improving the understanding of important property tax issues. Founded in 1934, the organization has approximately 8,250 members worldwide, who come from governmental, business and academic communities, including assessment agencies in all fifty states.

The eight objectives of IAAO are stated in the IAAO Constitution, Art. 1, Sec. 2, as follows: (1) to improve the standards of assessment practice; (2) to educate those engaged in assessment practice; (3) to elevate the standards of personnel requirements in assessment offices; (4) to educate the general public in matters relating to assessment practice; (5) to engage in research and to publish the results of studies in assessment administration; (6) to provide a clearinghouse for the collection and distribution of useful information relating to assessment practice; (7) to cooperate with other public and private agencies interested in improving assessment administration; and (8) to promote justice and equity in the distribution of the property tax burden. IAAO speaks here as an organization dedicated to equitable, efficient and credible property taxation, and not merely as a trade association for assessors.

IAAO is concerned about the assessment inequities that would result if the Supreme Court of the United States affirms the decision of the court below. In the decision of the Court of Appeal of the State of California, and in

the California Supreme Court's denial of review, the California courts have endorsed "welcome stranger" assessing, a system under which assessments are largely based on a property's most recent sale price rather than current market value.

A hypothetical example illustrated by a table below demonstrates the inequities of "welcome stranger" assessing. In the example, three *identical* properties are assumed to have had a market value of \$39,000 in 1976, which increased to \$87,000 by 1991. But the current tax bill for each property is significantly different under "welcome stranger" assessing, if we assume a nominal tax rate of four percent of assessed value and assessment on the basis of the property's *most recent sale price*:

Property	Current Market Value	Year of Last Sale	Sale Price	Current Assessed Value	Current Tax Bill
1	\$87,000	1976	\$39,000	\$39,000	\$1,560
2	87,000	1986	68,000	68,000	2,720
3	87,000	1991	87,000	87,000	3,480

Under the "welcome stranger" system of assessing, inequity in California assessments has already reached monstrous proportions, as shown by the horrific "real life" examples cited in the Petition for Writ of Certiorari (pp. 6-11). Furthermore, the harmful effects of that system will only multiply exponentially as years pass, even if (as seems unlikely) a sanctioning of "welcome stranger" assessing by this Court encourages no other states to adopt that practice.

IAAO believes that affirming the decision of the court below would jeopardize over seventy years of legislative, administrative and judicial progress in improving the equity of the property tax. Therefore, IAAO urges this Court

to reverse that decision, holding the “welcome stranger” system of assessment unconstitutional.

SUMMARY OF ARGUMENT

IAAO submits that the Court of Appeal of the State of California erred in concluding that the California practice of systematically assessing recently sold properties on the basis of their selling price, while failing to reassess similar properties that have not recently sold, does not amount to discriminatory assessment prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. Although this Court did not address the constitutionality of a state-sanctioned “acquisition value” system of property tax assessment in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989), the logic of the Court’s opinion in that case, and a correct analysis of constitutional equal protection requirements, should have compelled a ruling overturning California’s assessment system.

This Court’s decision in *Sunday Lake Iron Company v. Township of Wakefield*, 247 U.S. 350 (1918), established that “intentional and systematic” undervaluation of other property in the same class contravenes the constitutional rights of one taxed upon the full value of his property. Furthermore, this Court’s decisions in a long line of cases demonstrate that, while state classification of property for tax purposes is constitutionally permissible, the “welcome stranger” assessment policy adopted in California following passage of Proposition 13 constitutes the kind of “in-

tentional and systematic” assessment discrimination that violates federal equal protection requirements, since California’s “classification” system is not only grossly inequitable, but totally irrational.

The amicus believes that market value assessment would provide a remedy for the inequities that have arisen from California’s adoption of “welcome stranger” assessing, but it is not necessary for this Court, in deciding the case at bar, to mandate market value assessment nationwide. Rather, the Court need only conclude that the current California system violates equal protection imperatives, leaving that state to develop an alternative system that does not improperly infringe on constitutional rights.

The Court should, however, consider the enormous personal hardships and practical difficulties that would be created by the retroactive application of a decision striking down California’s “welcome stranger” assessment system. Therefore, the amicus urges this Court to hold that, in ad valorem property tax administration, the California practice of systematically assessing recently sold properties on the basis of their selling price, while not reassessing similar properties that have not been sold, is in violation of the Equal Protection Clause of the Fourteenth Amendment. But that decision should be given only prospective effect.

ARGUMENT

1.

In Ad Valorem Property Tax Administration, The California Practice Of Systematically Assessing Recently Sold Properties On The Basis Of Their Selling Price, While Failing To Reassess Similar Properties That Have Not Recently Sold—Commonly Known As “Welcome Stranger” Assessing—Is In Violation Of The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution.

In this proceeding, involving a homeowner's challenge to an assessment placed on her property for ad valorem tax purposes by the Los Angeles County Assessor, the California Court of Appeal affirmed a lower court's dismissal of the Petitioner's suit for a declaratory judgment and tax refund, holding the California property tax assessment system established with the enactment of Cal. Const., Art. XIII A (hereafter referred to as “Proposition 13”) did not violate the Petitioner's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by causing similarly situated properties to be taxed disparately, and did not infringe on any constitutional right of citizens to travel interstate. *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259, 275 Cal. Rptr. 684 (1990). In reaching that decision, for which review was later denied by the California Supreme Court, the Court of Appeal determined the case was controlled by the California Supreme Court's ruling upholding the constitutionality of Proposition 13 in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 149 Cal. Rptr. 239, 583 P.2d 1281 (1978), despite the subsequent development of massive assessment

inequality in California and this Court's striking down “acquisition value” assessing in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989) (hereafter referred to as *Allegheny*).

IAAO believes that the Court of Appeal erred in concluding the *Allegheny* decision was inapposite, as *Allegheny* made it clear the systematic practice of reassessing properties which have sold, while not reassessing similar properties that have not been recently sold (“welcome stranger” assessing) violates federal equal protection requirements.¹ It is true that *Allegheny* involved discriminatory assessment at the *local* level, and the *Allegheny* Court was not required to decide whether the Webster County assessment method would “stand on a different footing” if it were the law of a *state* (488 U.S. at 344, fn. 4). Nevertheless, the reasoning of the Court's opinion in *Allegheny* and a correct analysis of equal protection requirements should have compelled a ruling overturning California's assessment system on equal protection grounds.

In *Allegheny*, the Court established that the constitutional requirement under the Equal Protection Clause is “the seasonable attainment of a rough equality in tax treatment of similarly situated property owners.” 488 U.S. at 343. The Court found a Webster County “acquisition value”-based assessment method unconstitutional, noting that county adjustments to the assessments of property

¹ Although IAAO is not here arguing California's assessing system violates “right to travel” guarantees of the U.S. Constitution, that fact should not be taken to suggest the amicus's disagreement with the Petitioner's argument that California's assessing system unconstitutionally burdens the right to travel, but simply the amicus's desire to focus on the broader inequities inherent in that system.

not recently sold were "too small to seasonably dissipate the remaining disparity between these (older) assessments and the assessments based on a recent purchase price." 488 U.S. at 344. Moreover, the Court recognized that the "intentional systematic undervaluation by *state* officials of other taxable property in the same class contravenes the constitutional right of one taxed upon the full value of his property." 488 U.S. at 345 (*emphasis added*).

The principal distinction the Respondents offer between *Allegheny* and this case is that *Allegheny* did not directly deal with an "acquisition value"-based system sanctioned by *state* law comparable to Proposition 13. But this is a distinction without significance in view of the express language of the Fourteenth Amendment: "[N]or shall any *State* deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (*emphasis added*)."² Furthermore, the fact that Proposition 13 was adopted by the referendum process cannot save California's assessing system from equal protection scrutiny, as this Court has confirmed, "It is plain that the electorate as a whole, whether by referendum or otherwise, could not order . . . action violative of the Equal Protection Clause." *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, 473 U.S. 432, 448 (1985).

Under a proper analysis of equal protection requirements, the constitutionality of California's "welcome stranger" assessing system must be considered in light of this Court's early pronouncement that the purpose of the Equal Protection Clause is "to secure every person within the State's jurisdiction" against "intentional systematic" discrimination, "*whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.*" *Sunday Lake Iron Company v. Township of Wakefield*,

247 U.S. 350, 352-53 (1918) (*emphasis added*). In a long line of property tax cases following that pronouncement,² this Court's decisions have upheld the rule that a taxpayer can prove unconstitutional discrimination in assessing if it can be shown that disparities in assessed values result not from "mere errors of judgment" but from "something which in effect amounts to an intentional violation of the essential principle of practical uniformity." 247 U.S. at 353.

The Respondents in this case cannot argue that the discriminatory assessing system mandated by Proposition 13 is not intentional and systematic. Rather, they rely on this Court's decisions holding that, absent the involvement of a suspect category, such as race, or a category involving a fundamental freedom, such as the right to vote, states may adopt even intentionally discriminatory classifications of property for tax purposes, as long as there is a "rational basis" for such classifications.³

The amicus, however, does not argue against the broad power of the states to divide different *kinds* of property into *rational* developed classes, since the Constitution clearly does not require states to treat "things which are different in fact . . . as though they were the same." *Rinaldi v. Yeager*, 384 U.S. 305, 309 (1966). The amicus contends only that California's "welcome stranger" assessing system fails the "rational basis" test, and should therefore be struck down by this Court as evidencing the kind of

² See, e.g., *Sioux City Bridge Co. v. Dakota County, Nebraska*, 260 U.S. 441 (1923); *Southern Railway Co. v. Watts*, 260 U.S. 519 (1923); *Chicago G.W. Ry. v. Kendall*, 266 U.S. 94 (1924); *Cumberland Coal Co. v. Board of Revision of Tax Assessments in Greene County, Pennsylvania*, 284 U.S. 23 (1931).

³ See Respondents' Brief in Opposition to the Petition for Writ of Certiorari, pp. 12-14.

intentional and systematic discrimination prohibited by the Fourteenth Amendment.

Under the “rational basis” test, discrimination is not to be supported by mere fanciful conjecture and cannot stand as reasonable if it offends “the plain standards of common sense.” *Hartford Steam Boiler Inspection & Insurance Co. v. Harrison*, 301 U.S. 459, 462 (1937). Arbitrary selection “cannot be justified by calling it classification.” *Southern Railway Company v. Greene*, 216 U.S. 400, 417 (1910).

In previous cases, this Court has not hesitated to strike down state and local classification schemes because they violated the “rational basis” test. For example, in *Louis K. Liggett Co. v. Lee*, 288 U.S. 517 (1933), a state law levying privilege taxes on store owners was declared void because no rational basis could be found for levying a higher tax per store on owners with stores in several counties as opposed to owners with stores in the same county. Likewise, in *Southern Railway Company v. Greene*, 216 U.S. 400 (1910), discriminatory Alabama franchise taxes on foreign corporations were invalidated; and in *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920), the Court voided a tax on income of Virginia corporations derived from out-of-state operations where state law, without a rational basis, taxed only those corporations also having in-state business and exempted corporations that did no business in Virginia.⁴

⁴ *Southern Railway Company v. Greene*, 216 U.S. 400 (1910), is particularly instructive, perhaps, because it dealt with a form of protection for current residents (in that case, resident corporations) comparable to the protections Californians may have intended to adopt when they approved Proposition 13. In a non-tax case, this Court has also invalidated the New York Milk Control Act for discriminating between milk dealers without well-advertised trade

(Footnote continued on following page)

On the other hand, the amicus believes that in none of the cases where this Court has voided tax classifications as unconstitutional, and certainly not in any of the cases cited by the Respondents where tax disparities have been allowed to continue, has this Court been required to evaluate the constitutionality of an assessment and/or tax system so devoid of rationality as California’s “welcome stranger” assessing. Far from pursuing a futile quest for “precise, scientific uniformity in assessments” like the taxpayers in *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 527 (1959), the Petitioner in this case, and the amicus, are challenging a system adopted in disregard of all contemporary standards in assessment administration, which has produced gross inequities in assessments and is guaranteed to produce even more illogical and inequitable results the longer it is allowed to remain in existence.

The inequities of “welcome stranger” assessing in California are clearly illustrated when the effective tax rates of various homeowners are compared.⁵ For example, the estimated 1988 effective tax rate for California residential property not sold since Proposition 13 was enacted in 1978 was less than 0.3 percent, whereas the effective tax rate

⁴ continued

names who were in business before April 10, 1933, and otherwise comparable milk dealers who entered the business after that date, demonstrating that classifications based on arbitrary dates will not pass the “rational basis” test. See *Mayflower Farms, Inc. v. Ten Eyck*, 297 U.S. 266 (1936).

⁵ The effective tax rate is the stated tax rate expressed as a percentage of market value. The effective tax rate will be different from the stated tax rate where the assessment ratio is not equal to 1. The assessment ratio is the fractional relationship an assessed value bears to the market value of the property in question.

for recently sold properties was 1.0 percent, over three times higher.⁶

Inequity in an assessing system may also be viewed by reference to the most widely accepted index of assessment uniformity, the "coefficient of dispersion."⁷ Coefficients of dispersion of 15 percent or less generally are regarded as indicative of satisfactory assessment performance for residential property, and coefficients of 20 percent or less are generally regarded as demonstrating satisfactory performance in assessing properties as a whole within any jurisdiction.

Data on coefficients of dispersion compiled by the U.S. Bureau of the Census during the quinquennial Census of Governments provide an indication of the effects on assessment performance of Proposition 13.⁸ In 1976, the median coefficient of dispersion of California counties surveyed was 17.1, whereas by 1981, the comparable measure had risen to 28.2. In 1976, California ranked sixth among states nationwide in terms of this measure of assessment uniformity, but in 1981, California ranked thirty-third.

⁶ Break, *Proposition 13's Tenth Birthday: Occasion for Celebration or Lament?* (Unpublished paper presented at Lincoln Institute of Land Policy's Tax Policy Roundtable, April 28-30, 1988, Coronado, California), pp. 14-21.

⁷ The coefficient of dispersion is the average absolute deviation of a group of assessment ratios, taken around the median ratio and expressed as a percentage of that measure.

⁸ U.S. Bureau of the Census, *1977 Census of Governments*, vol. 2, *Taxable Property Values and Assessment-Sales Price Ratios* (Washington, D.C., 1978) and U.S. Bureau of the Census, *1982 Census of Governments*, vol. 2, *Taxable Property Values and Assessment/Sales Price Ratios* (Washington, D.C., 1984).

An increase in the coefficient of dispersion implies an increase in the average inequality of property tax burdens.⁹ Again using data on California from the Census of Governments as an example, the *average* property tax "mispayment"¹⁰ in California increased 43 percent between 1976 and 1981, from about \$140 to about \$200, even though the average effective tax rate decreased from 1.7 percent to about 0.7 percent of market value.

Inequities in California assessing continue to this day, despite the recent cooling off of the real estate market there. A report by the California Senate Commission on Property Tax Equity and Revenue, published in June 1991, recognized that "owners of property purchased in 1975 today pay far less taxes than a recent home buyer for comparable property"¹¹ and that "parcels with vastly

⁹ Geraci and Plourde, "Benefits and Costs of Improved Property Tax Assessment," in International Association of Assessing Officers, *Analyzing Assessment Equity: Techniques for Measuring and Improving the Quality of Property Tax Administration* (Chicago, 1977).

¹⁰ The assumptions and calculations upon which this illustration is based are:

Year (1)	Average Property Value (2)	Coefficient of Dispersion (3)	Average Assessment Error (Col. 2 x Col. 3) (4)	Effective Tax Rate (5)	Average "Mis- payment" (Col. 4 x Col. 5) (6)
1976	\$ 47,000	0.171	\$ 8,100	0.017	\$140
1981	100,600	0.282	28,400	0.007	200

Sources:

U.S. Bureau of the Census, *1977 and 1982 Censuses of Government*, vol. 2: column 2, tables 9 and 11, respectively; column 3, tables 16 and 18, respectively; and column 5, tables 20 and 22, respectively.

¹¹ *Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate* (Sacramento, 1991), p. 32.

different market values can be found which pay the same property taxes.”¹² Concluding that the aggregate effect of “side-by-side” disparities on the tax rolls is an “unequal distribution of the overall property tax burden,”¹³ the Commission also cited a sampling of owner-occupied homes on the 1988 assessment rolls by the State Board of Equalization, indicating that about 2 million homes (about 44 percent of all such residences) still had a 1975 acquisition base year, with their owners paying about a fourth of the total property tax bill for the state. The remaining 2.5 million homes, representing 56 percent of such properties, were responsible for three-fourths of the taxes levied.¹⁴

What California has, then, is a monstrously inequitable assessing system—one that permits properties identical *in every way save one*, the date of their acquisition, to be assessed and taxed in a variety of different ways, depending on the dates they were last sold. Furthermore, the inequities inherent in the California system will just get worse over time, as the Senate Commission has recognized,¹⁵ to the extent changes in market values are not reflected in the maximum annual two-percent assessment increase permitted by Proposition 13.¹⁶

¹² *Id.*

¹³ *Id.* at 33.

¹⁴ *Id.*

¹⁵ *Id.* at 1 and 32.

¹⁶ Proposition 13 created what is likely to be a more inequitable system over time than the one this Court invalidated in *Allegheny*, because of the two-percent limit on annual increases in assessments. Across-the-board percentage increases in assessments do not reduce inequities, and they are not the equivalent of an “honest effort” to eliminate discrimination. See *Sunday Lake Iron Company v. Township of Wakefield*, 247 U.S. 350, 353 (1918). Nonetheless,

(Footnote continued on following page)

As for the rationality of California’s assessing system, several reasons for the adoption of “acquisition value” assessing might be advanced. It might be argued that such a system enables property owners to accurately predict their future tax liability. Furthermore, it might be said that such a system treats people “fairly,” based on decisions made and expectations created at the time of purchase, rather than taxing them on the basis of unrealized “paper” gains or losses.

Supposing reasons for the adoption of a theoretically pure “acquisition value” assessing system, however, is not the same as developing a “rational basis” for the system. Petitioner and the amicus are here attacking California’s system, ever since the adoption of Proposition 13, has been far from a pure “acquisition value” system, and it should not be upheld merely because a pure “acquisition value” system—which exists nowhere in the real world, to the amicus’s knowledge—might have some theoretical underpinnings.¹⁷

The Respondents would have this Court ignore the fact that Proposition 13 itself denied “acquisition value” assessment’s benefits, at least partially, to those California property owners who had acquired their property before the 1975-76 tax year, arbitrarily bringing their values up to

¹⁶ *continued*

less, it should be noted that the Webster County system permitted the county assessor the administrative discretion needed to make three separate ten-percent increases in assessments over a seven-year span—giving the assessor greater opportunity to minimize assessment inequity than the two-percent cap affords California assessors. See *Allegheny*, 488 U.S. 336, 338 (1989).

¹⁷ See *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944), noting, in the rate-making context, that “[i]t is not theory, but the impact . . . that counts.”

the level for that year. Furthermore, they overlook the departure from pure “acquisition value” assessing in Proposition 13’s creation of a limit for increases in assessed value, but not decreases based on declining market values since acquisition.

After adoption of Proposition 13, California voters began increasing the irrationality of their assessing system by creating exceptions to the reassessment-upon-transfer requirement of “acquisition value” assessing. Thus, acquisition valuation was waived for transfers between spouses or as part of a divorce settlement,¹⁸ and taxpayers 55 years of age or older were allowed to sell their residences and transfer their old assessed values to their new homes, provided they were no more valuable than the residences sold.¹⁹ Parents were permitted to transfer not only their principal residence, reassessment-free, to their children, but also up to \$1 million worth of other real property (or the children could be the transferors and the parents recipients of this assessment windfall).²⁰

Not only by referendum, but by action of the California legislature and administrative regulation, complexities and irrationalities have been added to the California “welcome stranger” assessing system. From special exemptions for transfers among some, but not all, joint tenants,²¹ to

¹⁸ Cal. Const. Art. XIII A, §32(g); Cal. Rev. & Tax. Code §63.

¹⁹ Cal. Const. Art. XIII A, §32(a); Cal. Rev. & Tax. Code §69.5.

²⁰ Cal. Const. Art. XIII A, §2(h); Cal. Rev. & Tax. Code §63.1. The \$1 million exemption applies to *each* parent or child making the transfer. For a married couple transferring to children, the exemption is \$2 million worth of property. The dollar value for the exemption is calculated in *assessed* value, not current market value, which can be a far different dollar amount.

²¹ See Cal. Rev. & Tax. Code §65.

exclusions from reassessment and special rules applying to transfers involving corporations and other legal entities²² (well summarized in an amicus curiae brief filed with the Court in this case by the Building Industry Association of Southern California), the facade of “acquisition value” has been removed from assessing in California. And the complexity only increases when the statutes and rules relating to assessment and taxation of new construction at current market value—an integral part of the system established by Proposition 13—are taken into consideration.²³

The amicus certainly would not argue that a state, in creating a classification system, may not also adopt complex rules for its implementation—if the classification system itself is a permissible one and if the rules serve the rational purpose for which the classification system was created, or even some other rational purpose. In this case, however, the rules for implementation adopted by California demonstrate that the reasons previously advanced for the creation of California’s current assessment system were false ones. The real purpose of Californians who created that system was never to establish pure “acquisition value” assessing in California, for which a theoretical justification might be imagined in terms of making tax burdens generally fairer, or even more predictable. It was simply to shift tax burdens to more recent purchasers of property in the state and those who would build there—a pull-up-the-ladder, no-growth effort designed to make sure the current property owners could keep their cottages in the sun with relatively low taxes (and even

²² See, e.g., Cal. Rev. & Tax. Code §62(a) and §64; Cal. Code of Regulations, Title 18, Rule 462(j).

²³ See, e.g., Cal. Rev. & Tax. Code §70 and §71; Cal. Code of Regulations, Title 18, Rules 463(a) and (b).

transfer them within the family at no tax cost) while would-be newcomers to the favored class of California property owners either picked up a disproportionate share of the tax tab for the costs of state and local government, or, better yet, left ownership of California to the advantaged class.

The inequities created by the current California assessing system would not be so bad if the irrationality of the system weren't so great—and vice versa. But clearly, the California "welcome stranger" system fails the "rational basis" test, just as it fails to provide for an equitable sharing of ad valorem property tax burdens in the state.

It is for reasons such as those we have illustrated here that IAAO recommends in its policy statements that assessments should be based on current market values. The property tax has been generally conceived to be an ad valorem tax, which means that a tax levy is apportioned among taxpayers according to the value of each taxpayer's property. In a dynamic economy, not only are revenue needs changing, but the values of property are also changing. While some values increase, others remain stagnant, and still others decline. It follows that as long as property values are changing, a uniform relationship between property values and property taxes can be attained only if current market value is the basis for assessment, and current market value assessment clearly implies an annual assessment program.

An annual assessment program requires assessors to: consciously and continuously reevaluate the factors that affect value; express the interactions of those factors mathematically; use those mathematical expressions, which are referred to as mass appraisal models, and other mass appraisals, to estimate the values of properties; and repeat

this process annually to maintain equitable assessments at statutory levels. Annual assessment does not require assessors to change all assessments each year, but it does require assessors to maintain the capability of changing each assessment each year if a change is warranted, and to maintain an effective program for periodically reinspecting properties.

For a variety of reasons, legal assessment standards may not always conform to IAAO's recommendations, and contemporary standards in assessing view as marginally acceptable assessment systems that ensure intervals of no greater than four years between reappraisals of each and every taxable property in an assessment jurisdiction. Plainly unacceptable, however, are systems permitting genuine reappraisals only if they are triggered by an external activity affecting comparatively few properties, such as "welcome stranger" assessing.²⁴

In this case, IAAO believes the inequities created by "welcome stranger" assessing in California could have been avoided by reference to contemporary assessing standards in the implementation of a system based on current market values. However, it is not necessary, in deciding this case, for the Court to insist that any particular system of assessing be adopted nationwide for property tax purposes—and, in any event, that would be an improper usurpation of the legislative function.²⁵

²⁴ International Association of Assessing Officers, *Improving Real Property Assessment: A Reference Manual* (Chicago, 1978), pp. 331-32.

²⁵ Current market value assessment may be the only system that will safely meet equal protection requirements in the assessing of property for general ad valorem tax purposes. But the amicus is

(Footnote continued on following page)

While the amicus advocates current market value assessing, the Court in this case need only declare the California system unconstitutional and direct that state's lawmakers to develop a system that meets equal protection requirements, which the Senate Commission's report indicates they are prepared to do.²⁶ The amicus, then, respectfully submits that this Court should recognize the inequities and irrationality inherent in California's "welcome stranger" assessing, and declare that system violates the Equal Protection Clause of the Fourteenth Amendment.

2.

Considering The Hardship And Practical Consequences That Would Result From A Retroactive Invalidation Of Assessments For Ad Valorem Property Tax Purposes In California, This Court Should Give Only Prospective Effect To Its Holding That "Welcome Stranger" Assessing, As Practiced In California, Violates Constitutional Equal Protection Requirements.

Although the amicus is urging this Court to strike down California's system of "welcome stranger" assessing as

²⁵ continued

not prepared to argue that another system—at least in theory—could not pass constitutional tests, even if California's does not. Still less is the amicus inclined to argue that different systems might not constitutionally be applied to a completely different tax scheme, such as an income tax on capital gains or a special tax on securities. See, e.g., *Bell's Gap Railroad Company v. Pennsylvania*, 134 U.S. 232 (1890), in which a tax was found constitutionally applied to the par or nominal value of corporate bonds and securities.

²⁶ See *Report of the Senate Commission on Property Tax Equity and Revenue to the California State Senate* (Sacramento, 1991), pp. 4-16, in which the Commission makes certain recommendations for a phased-in return to a market value assessment system and the correction of inequities in California assessing.

unconstitutional, IAAO is not unmindful of the impact a retroactive application of such a ruling would have in California. The California Assessors Association, in a separately filed amicus curiae brief in this matter, has explained the hardships and practical consequences that would be created by the retroactive application of a decision striking down California's "welcome stranger" assessing. Based on the analysis contained in that brief, IAAO asks this Court to give maximum application to the principle of "non-retroactivity" in deciding the case now before it.

In *Chevron Oil Co. v. Huson*, 404 U.S. 97, 106-107 (1971), this Court enumerated three factors that should be considered in dealing with the "nonretroactivity" question: first, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed; second, the Court must weigh the merits and demerits in each case by looking to the prior history of the rule in question; and third, the Court must weigh the inequity imposed by retroactive application. Recent decisions of this Court have left some doubt as to whether the Court is still willing to apply the *Chevron Oil* analysis.²⁷ But the amicus feels that such an analysis is particularly applicable to this case.

Applying the three-part *Chevron Oil* test, it is certainly true that this case is one of first impression, since the Court expressly refused to rule on the equal protection

²⁷ See, e.g., *James B. Beam Distilling Co. v. Georgia*, No. 89-680 (Supreme Court of the United States, June 20, 1991), in which the question of "nonretroactivity" produced five separate opinions, none of which was filed on behalf of more than three of the Justices.

questions this case presents when the Court decided *Allegheny*. Although a decision to strike down California's "welcome stranger" assessing follows naturally from the ruling in *Allegheny*, as the amicus has demonstrated, it cannot be said that such a decision was clearly foreshadowed by that case so that it would not have been reasonable for assessing authorities and taxpayers in California to rely on the continued viability of Proposition 13's assessment freeze in determining how property should be valued for tax purposes.

With respect to weighing the merits and demerits of applying "nonretroactivity" in this case based on the prior history of equal protection as a guarantee of equity in assessments, it would also appear that the merits of applying the "nonretroactivity" rule in the case at bar would outweigh the demerits, given the limited resources of the State of California and its subdivisions. Equity in assessments, it would seem, would be best promoted by allowing taxpayers and government to concentrate on the reassessments for future years that will be necessitated by an overturning of the "welcome stranger" rule, rather than dwelling on the inequities that have been an unfortunate part of assessing in California since the adoption of Proposition 13.

Finally, for the reasons expressed in the brief filed by the California Assessors Association, application of "nonretroactivity" in overturning "welcome stranger" assessing would seem to be necessitated by the hardship and practical consequences that would be created for California assessing officers, and the taxpayers who must underwrite the expense of property tax assessing in California, if the Court's ruling invalidated all assessments made since the so-called "acquisition value" system was established in California. The California Assessors Association

brief clearly indicates the substantial inequitable results that retroactive application might produce for the sake of eventually creating a more equitable system of assessment for property tax purposes in California.

Concerned about the potential hardship a retroactive invalidation of "welcome stranger" assessing in California might cause, then, and believing that the prospective application of the Court's ruling would more readily facilitate adoption of a substitute system for property tax administration allowing for greater equity in assessment, the amicus asks that the Court give prospective effect to a ruling that "welcome stranger" assessing, as practiced in California, violates the U.S. Constitution.

CONCLUSION

IAAO respectfully concludes this Court should hold that, in ad valorem property tax administration, the California system of assessing recently sold property based on its sale price, while not reassessing similar but unsold property, is discriminatory and a direct violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, though we urge only a prospective, and not a retroactive invalidation of that system. As the Court noted in *Allegheny*, 488 U.S. 336, 346 (1989), "[T]he fairness of one's allocable share of the total property tax burden can only be meaningfully evaluated by comparison with the share of others similarly situated relative to their property holdings." If this Court fails to overturn "welcome stranger" assessing, large numbers of property owners will be denied the opportunity of receiv-

ing such a fair apportionment of the property tax burden and the principle of equity in assessment and taxation will be dealt a major blow.

Respectfully submitted,

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NO. 90-1912

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

STEPHANIE NORDLINGER,
Petitioner,

v.

KENNETH HAHN, et al.,
Respondents.

On Writ of Certiorari
to the Court of Appeal
of the State of California

BRIEF OF AMICUS CURIAE WILLIAM K. RENTZ
ON THE MERITS
IN SUPPORT OF PETITIONER
STEPHANIE NORDLINGER

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CONSTITUTIONS:

California Constitution, Article XIIIIA (Proposition 13)	passim
U.S. Constitution, Fourteenth Amendment, Equal Protection Clause	passim

NO. 90-1912

IN THE
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OCTOBER TERM, 1991

STEPHANIE NORDLINGER,
Petitioner,

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BRIEF OF AMICUS CURIAE WILLIAM K. RENTZ
ON THE MERITS
IN SUPPORT OF PETITIONER
STEPHANIE NORDLINGER

William K. Rentz submits herewith his Brief of Amicus Curiae on the Merits in support of Petitioner Stephanie Nordlinger's claim that California's Proposition 13 is unconstitutional in violation of the Equal Protection Clause of the Fourteenth Amendment.

I. INTEREST OF AMICUS CURIAE.

The interest of Amicus Curiae William K. Rentz in this matter has been set forth

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previously in the Brief of William K. Rentz in Support of Petition for Writ of Certiorari (WKR Amicus Brief I), pages 1-2.

II. SUMMARY.

This case challenges the validity of the basic formula decreed by Article XIII A of the California Constitution (Proposition 13 on the 1978 ballot) for the computation of real property taxes throughout the state of California. Stephanie Nordlinger, the petitioner herein, contends, and this amicus curiae supports her contention, that the use of the Proposition 13 tax computation formula to determine property taxes year after year in an inflationary economy violates the requirements of equal protection embodied in the 14th Amendment to the U.S. Constitution.

The purpose of this brief is to complete the arguments begun in the Brief of William K. Rentz in Support of Petition for Writ of Certiorari (WKR Amicus Brief I). The present brief, therefore, must be read

in conjunction with that earlier brief. In this brief, this amicus curiae highlights several of the extraordinary aspects of the Proposition 13 inequalities and explains why the California Supreme Court's analysis of Proposition 13 in Amador Valley Joint Union High School District v. State Board of Equalization, 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978), in which the court characterized Proposition 13 as a tax system that treats all taxpayers in the same manner, makes Amador Valley valueless as precedent in this case. After a brief explanation of the traditional test used in equal protection cases, this amicus then shows how the justifications offered for Proposition 13 fail to support the Proposition 13 inequalities, and therefore, why Amador Valley must be disapproved and why the lower court in this case must be reversed.

III. THE INEQUALITIES BROUGHT ABOUT BY PROPOSITION 13 ARE EXTRAORDINARY.

- A. In any given tax year, California has now approached the point where in some parts of the state all current year buyers will pay higher taxes than any 1975 buyers.

As pointed out in the brief by this amicus curiae in support of the petition for writ of certiorari, Proposition 13 treats all current-year property taxpayers differently by assigning to them different tax computation dates and different standards for the tax amounts they will pay (WKR Amicus Curiae Brief I, pages 4-7). As a result, the homeowners who bought their property in 1991, on average, pay much higher taxes than the homeowners who bought in 1975. This is so because the average 1991 home price is much higher than the average 1975 home price.

In some parts of the state, however, it is coming close to the point where it is no longer merely a question of differences between average taxes -- in these parts of the state, if you bought your home in 1991, your tax will likely be, absolutely, higher

than any tax paid by any 1975 home buyer. This is so because in these parts of the state, the cheapest homes available now are more expensive than the most expensive homes available in 1975, and the taxes differ accordingly. The photographs included in Petitioner's brief in support of her Petition for Writ of Certiorari, at pages 9-10, demonstrate this sobering reality.

B. The Proposition 13 inequalities are the fortuitous result of inflation.

In a static economy, there would be no inequalities under Proposition 13: Mr. Jones buys a house in 1975 for \$50,000, and Mr. Green buys an identical house in 1991 for \$50,000; and their taxes in 1991 are the same under Proposition 13. In an inflationary economy, however -- in the real world -- the price of Mr. Green's 1991 acquisition is closer to \$250,000, and his taxes far exceed Mr. Jones' taxes. The factors that influence inflation are so numerous and so complicated as to be totally beyond the control of any individual, and even beyond the control of governments and large

economic institutions. The rate of inflation varies -- sometimes inflation is rapid, sometimes slow, sometimes there is even temporary deflation. All of this is unpredictable and for all practical purposes fortuitous. This means that the difference between the taxes paid by Mr. Jones and Mr. Green is likewise fortuitous. The real estate market could remain relatively stable for several years, resulting in only a small difference between the taxes of Jones who buys at the beginning of the stable period and Green who buys at the end. On the other hand, the real estate market could inflate rapidly in a period of six months, resulting in a large difference between the taxes of those buying at the beginning and those buying at the end of that six month period.

There is no governmental purpose or policy inherent in Proposition 13 which suggests that these inequalities should occur in this manner. On the contrary, the existence and size of these inequalities are purely and simply the result of the

inflation lottery.

C. The Proposition 13 inequalities worsen as time passes.

Amicus curiae Howard Jarvis Taxpayers Association suggests that, even if there is an "appearance" of inequality in any given tax year, nevertheless, over the long run, Proposition 13 in an inflationary economy treats all taxpayers the same. See Brief Amicus Curiae of Howard Jarvis Taxpayers Association and Paul Gann's Citizens Committee in Opposition to Petition for Certiorari (HJTA Amicus Brief I), at pages 13-14:

"Every new buyer anticipates moving through a pattern of declining reassessment relative to the then current market value of his or her property as the years pass. All are treated equally in the sense that all begin at 100% of market value and progressively shift to lower and lower assessments relative to the then current market value. Whatever the initial tax 'disadvantage' a new owner appears to have, relative to his or her neighbor, is made up as time goes on."

There are at least three serious defects in this statement.

First, it ignores the mathematical fact that, as inflation drives the price of

housing up from one year to the next, the difference between the taxes paid by the 1975 buyers and by the most current buyers constantly increases. The Jarvis organization's logic speaks for itself in light of this fact.

Second, the Jarvis organization's statement ignores one of the key facts about inflation -- that it is random and uneven. Thus, even assuming that the inequality inflicted upon one set of current buyers is justified by the greater inequality inflicted on a later set of current buyers -- the fact remains that not everyone will receive even that meager benefit. Housing prices go up rapidly in some years, slowly in other years. Those who buy at the beginning of a long period of rapid inflation quickly become the beneficiaries of the Proposition 13 inequalities, soon finding themselves in the lower tax ranges. On the other hand, those who buy at the beginning of a long period of stable prices find themselves caught for a long time in the

highest tax range. There is nothing equal about this.

Third, the Jarvis organization's statement ignores a basic fact about peoples' lives: not everyone follows the same path in life. If everyone bought a house at age 20 and held onto it until their death at age 65, one could see how, at least theoretically, inflation could treat all people in the manner described by the Jarvis organization. But everyone does not buy at age 20 or die at age 65. Death, divorce, lost jobs, slowness in achieving prosperity, and a whole host of other circumstances make it impossible for some people to buy a home early in their life and hold onto it long enough to become the beneficiaries of the Proposition 13 inequalities. Meanwhile, fortune smiles on others, enabling them to buy early and hold on long so as to reap those benefits. Inevitably, the holding periods for homes will vary widely, and therefore, the extent to which individuals will over time become the beneficiaries of

the Proposition 13 inequalities will likewise vary.

In light of these considerations, it is clear that the passage of time does not alleviate the "apparent" inequalities that occur in any given tax year. On the contrary, the passage of time only makes more obvious the real, ever-present, and ever-increasing nature of those inequalities.

IV. THE DESCRIPTIONS OF PROPOSITION 13 THAT FOCUS ON THE WAYS THAT PROPOSITION 13 TREATS PEOPLE EQUALLY HAVE NO BEARING ON THE PRESENT CASE.

In Amador Valley, the court found a way to describe Proposition 13 as treating all taxpayers in precisely the same manner. See 22 Cal.3d at 235 and WKR Amicus Brief I, at pages 21-25. In essence, the Amador Valley court said that Proposition 13 treats all taxpayers equally because it applies the same rule to all taxpayers. It is indeed quite true that Proposition 13 applies the same rule to all taxpayers. But a similar statement can be made about practically any

law that legitimately or illegitimately discriminates between groups. That statement ignores the fact that once the Proposition 13 rule is applied "equally" to all taxpayers, it has the effect of dividing all those taxpayers into different classifications, with the result that some pay low taxes while others pay high taxes. Thus, while it is possible to identify one aspect of Proposition 13 that reflects equal treatment of taxpayers, nevertheless, the stark inequalities described by petitioner still remain and still must be justified. The one aspect showing equal treatment is simply irrelevant to that task. In light of other cases decided by this court, it is clear that any attempt to justify one inequality by pointing out that the offending statute treats people "in exactly the same manner" in some other respect is doomed to failure. Williams v. Vermont, 472 U.S. 14, 27, 86 L.Ed..2d 11, 105 S.Ct. 2465, 2474 (1985); see also Rinaldi v. Yeager, 384 U.S. 305, 308, 16 L.Ed.2d 577, 86 S.Ct. 1497,

1499 (1966) (equal protection requires more than just non-discrimination within the class created).

V. AMADOR VALLEY'S FAILURE TO ADDRESS ITS JUSTIFICATION EFFORTS TO THE UNEQUAL TREATMENT MAKES IT DISTINGUISHABLE FROM THE PRESENT CASE.

In his earlier brief (WKR Amicus Brief I, at pages 25-26), this amicus pointed out that the failure of Amador Valley to address its justifications for Proposition 13 to the unequal treatment made Amador Valley distinguishable from the present case, and promised to discuss this point in greater detail. Here is that discussion.

A. General principles of stare decisis require that Amador Valley be distinguished.

The principle that would give a controlling effect to the Amador Valley case is, of course, the principle of stare decisis. See Auto Equity Sales, Inc. v. Superior Court, 57 Cal.2d 450, 455, 20 Cal.Rptr. 321, 232-24, 369 P.2d 937 (1962). That principle holds, in a general way, that an appellate court decision in one case is

binding on the lower courts in subsequent cases, where the factual and legal issues in the second case are the same as in the first. To understand this principle more clearly, however, it is helpful to compare the principle of stare decisis with the principle of collateral estoppel.

Under the principle of collateral estoppel, a judgment is given broadly conclusive effect between parties to a lawsuit in subsequent disputes between the same parties over the same matter: the judgment is binding on the parties as to all issues that could have been raised, even when some of those issues were not in fact raised by the parties or considered by the court. See Evans v. Celotex Corp., 194 Cal.App.3d 741, 744, 746-47, 238 Cal.Rptr. 259, 261-62 (1987); Frommshagen v. Board of Supervisors, 197 Cal.App.3d 1292, 1301, 243 Cal.Rptr. 390, 394-95 (1987); and Takahashi v. Board of Education, 202 Cal.App.3d 1464, 1481, 249 Cal.Rptr. 578, 589 (1988).

By contrast, the conclusive effect given by the principle of stare decisis is much narrower: an appellate court opinion has precedential effect only as to those issues that were actually presented and decided by the court. See Santa Monica Hospital Medical Center v. Superior Court, 203 Cal.App.3d 1026, 1033, 250 Cal.Rptr. 384, 388 (1988); Bryant v. Superior Court, 186 Cal.App.3d 483, 495-96, 230 Cal.Rptr. 777, 785 (1986). Under the doctrine of stare decisis, the two cases could be factually very similar, in an overall sense; but what matters in terms of ascertaining the precedential value of the first case are the facts that were material to the court's decision in that case. If the second case raises issues involving different facts taken from the same overall set, and if these different facts evoke different legal considerations, then the first case, despite the overall similarities, will have no conclusive or precedential effect on the second. Issues that could have been raised

in the first case, but which were not raised, are left open for resolution in the second case. Avner v. Longridge Estates, 272 Cal.App.2d 607, 614, 77 Cal.Rptr. 633, 639 (1969) (discussing the case of Beck v. Bel Air Properties, Inc., 134 Cal.App.2d 834, 286 P.2d 503 (1955)).

In an overall sense, the facts involved in this present Proposition 13 case are similar to the facts involved in Amador Valley. However, Amador Valley did not deal with the precise issue involved here, because it did not attempt to justify those aspects of Proposition 13 which involved unequal treatment. Rather, Amador Valley focused its efforts on justifying those aspects of Proposition 13 which it characterized as treating everyone in precisely the same manner. Thus, even though Amador Valley could have dealt with the issue of whether the unequal treatment could be justified, it did not, and it is therefore distinguishable and cannot be used as precedent in this case.

B. McLaughlin v. Florida makes Amador Valley clearly distinguishable.

Pace v. Alabama (1883) 106 U.S. 583, 27 L.Ed. 207, 1 S.Ct. 637, and McLaughlin v. Florida, (1964) 379 U.S. 184, 189-91, 13 L.Ed.2d 222, 226-28, 85 S.Ct. 283, together demonstrate most clearly why Amador Valley's failure to direct its justification efforts at the unequal treatment distinguishes it significantly from the present case.

In Pace, the court considered an equal protection challenge to a statute that punished interracial adultery more severely than same-race adultery. The court found a way to describe the situation so that it looked as though all persons were treated the same: the court pointed out, with complete accuracy, that all blacks who violated the statute were treated the same as all whites who violated the statute, and furthermore, all blacks involved in same-race adultery were treated the same as all whites involved in same-race adultery. With this description firmly in its focus, the court simply ignored the fact that inter-

racial couples were treated differently from same-race couples, made no effort to determine whether the unequal treatment of interracial and same-race couples was justified, and found no violation of equal protection. 106 U.S. at 583-85, 27 L.Ed. at 207-8, 1 S.Ct. 637.

Eighty-one years later, in McLaughlin, the court considered an essentially identical statute against an equal protection challenge. Pace was offered as precedent for a decision finding no equal protection violation. Here, the court began by putting firmly into its focus the fact that interracial couples were treated differently from same-race couples. 379 U.S. at 188, 13 L.Ed.2d at 226, 85 S.Ct. 283. The court then analyzed Pace, to determine whether Pace was controlling authority for its decision. The court found that Pace was distinguishable and was therefore not controlling authority (379 U.S. at 191, 13 L.Ed.2d at 228, 85 S.Ct. 283:

"Judicial inquiry under the Equal Protection Clause, therefore, does not

end with a showing of equal application among the members of the class defined by the legislation. The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose -- in this case, whether there is an arbitrary or invidious discrimination between those classes covered by Florida's cohabitation law and those excluded. That question is what Pace ignored and what must be faced here."

On the question of time-based inequalities, the Amador Valley court's approach was exactly analogous to the Pace court's approach to race-based inequalities. Both courts found a way to describe the situation accurately so as to convey the impression that there was no substantial unequal treatment. Both courts then ignored the description that would have identified the inequalities, and both courts then, naturally enough, neglected to determine whether the ignored inequalities could be justified. As in McLaughlin, however, the lower court in this case should have found the earlier case to be distinguishable. The lower court erred in resting its equal protection decision on Amador Valley.

VI. THERE IS NO JUSTIFICATION FOR THE PROPOSITION 13 INEQUALITIES.

This court must now consider whether there is any sufficient justification for the Proposition 13 inequalities. In a brief filed earlier in this case, this amicus has shown how two purposes offered in Amador Valley to support Proposition 13 fail to justify the Proposition 13 inequalities. See WKR Amicus Curiae Brief I, pages 27-34. There are more justifications that have been offered, in Amador Valley and in this case; and these, likewise, fail to survive the test. First, however, a brief summary of the traditional test for determining whether unequal treatment can be justified is in order.

A. The traditional test for evaluating unequal treatment has several different formulations.

The traditional test for evaluating unequal treatment has been stated by this court in several ways. In essence, though, all these versions are but different ways of describing the same test.

The simplest formulation of the test requires that the different treatment, the discrimination, or the classification used to accomplish the different treatment have "a rational basis," or that it be "reasonable." Gregory v. Ashcroft, __ U.S. __, 115 L.Ed.2d 410, 430, 111 S.Ct. 2395, 2406 (1991); Allegheny Pittsburgh Coal Co. v. Webster County, 488 U.S. 336, 102 L.Ed.2d 688, 697, 109 S.Ct. 633 (1989); Lehnhausen v. Lake Shore Auto Parts, 410 U.S. 356, 360, 35 L.Ed.2d 351, 93 S.Ct. 1001, 1004 (1973); Dandridge v. Williams, 397 U.S. 471, 485, 25 L.Ed.2d 491, 90 S.Ct. 1153, 1161 (1970); McGowan v. State of Maryland, 366 U.S. 420, 425-26, 6 L.Ed.2d 393, 81 S.Ct. 1101, 1105 (1961); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 55 L.Ed. 369, 377, 31 S.Ct. 337, 340 (1911).

A second formulation requires that the different treatment, discrimination, or classification "rationally promote or further a legitimate state interest." Hooper v. Bernalillo County Assessor, 472

U.S. 612, 618, 86 L.Ed.2d 487, 105 S.Ct. 2862, 2866 (1985); Williams v. Vermont, 472 U.S. 14, 22-23, 86 L.Ed.2d 11, 105 S.Ct. 2465, 2471 (1985); Zobel v. Williams, 457 U.S. 55, 60, 72 L.Ed.2d 672, 102 S.Ct. 2309, 2313 (1982); Schweiker v. Wilson, 450 U.S. 221, 235, 67 L.Ed.2d 186, 101 S.Ct. 1074, 1083 (1981). This formulation could be somewhat misleading. If one omits the word "rationally" from this formulation of the test, or if one minimizes the importance of that word, then this test becomes merely one of several elements that must be present in order to pass the traditional test. See below, at pages 28-30. However, in Schweiker, supra, the court made it plain that under this formulation of the test, the discrimination must advance a legitimate legislative goal "in a rational fashion." 450 U.S. at 234, 67 L.Ed.2d at 197-98, 101 S.Ct. at 1082.

A third formulation requires that the different treatment, discrimination, or classification "must rest upon some ground

of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Kahn v. Shevin, 416 U.S. 351, 355, 40 L.Ed.2d 189, 94 S.Ct. 1734, 1737 (1974); Reed v. Reed, 404 U.S. 71, 76, 30 L.Ed.2d 225, 92 S.Ct. 251, 254 (1971); Allied Stores of Ohio, Inc. v. Bowers, 358 U.S. 522, 527, 3 L.Ed.2d 480, 79 S.Ct. 437, 441 (1959); F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415, 64 L.Ed. 989, 40 S.Ct. 560, 561-62 (1920).

The fourth formulation requires that the different treatment, discrimination, or classification "must bear a rational relationship to a legitimate governmental purpose." City of Cleburne, Tex. v. Cleburne Living Center, 473 U.S. 432, 440, 87 L.Ed.2d 313, 105 S.Ct. 3249, 3254 (1985); Metropolitan Life Insurance Co. v. Ward, 470 U.S. 869, 875, 84 L.Ed.2d 751, 105 S.Ct. 1676, 1680 (1985); Schweiker v. Wilson, 450 U.S. 221, 230, 67 L.Ed.2d 186, 195, 101 S.Ct. 1074, 1080-81 (1981); City of New

Orleans v. Dukes, 427 U.S. 297, 303, 49 L.Ed.2d 511, 96 S.Ct. 2513, 2517 (1976); U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528, 533, 37 L.Ed.2d 996, 93 S.Ct. 2821, 2825 (1973); Reed v. Reed, 404 U.S. 71, 76, 30 L.Ed.2d 225, 92 S.Ct. 251, 254 (1971); Matthews v. Lucas, 427 U.S. 495, 509-510, 49 L.Ed.2d 651, 96 S.Ct. 2755, 2774 (1966).

Under all of these formulations, it is clear that states have "wide latitude," "large leeway," or "wide discretion" within which to adopt classifications. "Mathematical nicety" and "scientific precision" are not required of any classification, and there is room for "rough accommodations" and for much "play in the joints." See, first, Lehnhausen, supra, 410 U.S. at 360, 35 L.Ed.2d 351, 93 S.Ct. at 1004; Dandridge, supra, 397 U.S. at 485, 25 L.Ed.2d 491, 90 S.Ct. at 1161; second, Williams v. Vermont, supra, 472 U.S. at 22-23, 86 L.Ed.2d 11, 105 S.Ct. at 2471; third, Kahn, supra, 416 U.S. at 355, 40 L.Ed.2d 189, 94 S.Ct. at 1737;

Allied Stores of Ohio, supra, 358 U.S. at 527, 3 L.Ed.2d 480, 79 S.Ct. at 441; and fourth, City of Cleburne, supra, 473 U.S. at 440, 87 L.Ed.2d 313, 105 S.Ct. at 3254; City of New Orleans, supra, 427 U.S. at 303, 49 L.Ed.2d 511, 96 S.Ct. at 2517; U.S.D.A. v. Moreno, supra, 413 U.S. at 533, 37 L.Ed.2d 996, 93 S.Ct. at 2825.

Similarly under all of these formulations, the limits of the states' discretion to enact classifications are exceeded only when the classifications are "arbitrary," "invidious," or "irrational." Gregory, supra, ___ U.S. at ___, 115 L.Ed.2d at 430, 111 S.Ct. at 2406; Allegheny, supra, 488 U.S. 336, at 344, 102 L.Ed.2d at 697, 109 S.Ct. 633; City of Cleburne, supra, 473 U.S. at 440, 87 L.Ed.2d 313, 105 S.Ct. at 3254; Lehnhausen, supra, 410 U.S. at 360, 35 L.Ed.2d 351, 93 S.Ct. at 1004; Reed v. Reed, supra, 404 U.S. 71, 76, 30 L.Ed.2d 225, 92 S.Ct. 251, 254; Dandridge, supra, 397 U.S. at 485, 25 L.Ed.2d 491, 90 S.Ct. at 1161; Allied Stores of Ohio, supra, 358 U.S. at

527, 3 L.Ed.2d 480, 79 S.Ct. at 441; see also Ferguson v. Skrupa, 372 U.S. 726, 732, 10 L.Ed.2d 93, 83 S.Ct. 1028, 1032 (1963); Williamson v. Lee Optical, 348 U.S. 483, 489, 99 L.Ed. 563, 75 S.Ct. 461, 475 (1955).

B. All formulations of the traditional test have in common a requirement that four elements be present in order to justify the differential treatment.

Regardless of the particular formulation that might be used, the cases decided by this court show that there are four elements that must be present in order to pass the traditional equal protection test. The first two elements define the nature of the purpose that must support the differential treatment. The second two elements define the nature of the rational relationship that must exist between the differential treatment and the purpose offered to support it.

First, there must be some broad or independent purpose behind the classification. The purpose must be something more than the mere intent to enact the different

treatment itself. It must connect the classification -- the means -- with a larger goal -- the end -- that expresses some value or at least a minimal sense of fairness. See Zobel, supra, 457 U.S. at 71, 72 L.Ed.2d at 672, 102 S.Ct. at 2318 (Brennan, concurring); Cleburne, supra, 473 U.S. at 452 fn. 4, 87 L.Ed.2d at 313 fn. 4, 105 S.Ct. at 3261 fn. 4 (Stevens, concurring). This amicus curiae has found no case in which the court's majority opinion discussed whether the purposes offered to justify unequal treatment were lacking in this regard. Perhaps this is because this element is so obvious that few defenders of a state enactment would offer such a flimsy justification, or because the court has felt that such a justification, if offered, was not worthy of discussion.

Nevertheless, Amador Valley may have run afoul of this requirement when it suggested that basing property taxes on the "acquisition value" of property could be justified because "the annual taxes which a

property owner must pay should bear some rational relationship to the original cost of the property...." 22 Cal.3d at 235. The problem here is that the "original cost" is just a different way of saying "acquisition value," and it does nothing to connect the means to a greater end. The purported "original cost" or "original purchase price" justification, to the extent that it is stated as above without any embellishments, is a synonym for the classification, not a reason for it. (See and compare WKR Amicus Brief I, at pages 27-28, where the "original purchase price" justification is stated and analyzed with embellishments.)

Second, the purpose offered for the discrimination must be legitimate. In several cases, this court has invalidated state enactments on equal protection grounds when it found that the purpose offered was not legitimate. See Moreno, supra, 413 U.S. at 534, 37 L.Ed.2d 996, 93 S.Ct. at 2826 ("a bare ... desire to harm a politically unpopular group cannot constitute a legitimate

governmental interest"); Zobel, supra, 457 U.S. at 63-64, 72 L.Ed.2d 672, 102 S.Ct. at 2314-15 (the desire "to reward citizens for past contributions ... is not a legitimate state purpose"); Metropolitan Life, supra, 470 U.S. at 875-80, 84 L.Ed.2d 751, 105 S.Ct. at 1680-82 ("the only question before us is whether those purposes are legitimate;" ... "promotion of domestic business within a State, by discrimination against foreign corporations that wish to compete by doing business there, is not a legitimate state purpose"); Cleburne, supra, 473 U.S. at 448, 87 L.Ed.2d 313, 105 S.Ct. at 3258-59 ("But mere negative attitudes, or fear, unsubstantiated by factors which are properly cognizable in a zoning proceeding, are not permissible bases for treating a home for the mentally retarded differently...").

Third, the purpose must be furthered in some reasonable degree by the classification or difference in treatment. In several cases, the court has invalidated state enactments when it found that the classifi-

cation did not further the alleged purpose. Moreno, 413 U.S. at 535-38, 37 L.Ed.2d 996, 93 S.Ct. at 2826-27 ("... classification does not operate so as to rationally further the prevention of fraud"); Jimenez v. Weinberger, 417 U.S. 628, 635-36, 41 L.Ed.2d 363, 94 S.Ct. 2496, 2501 (1974) (conclusively denying one group of afterborn illegitimate children an opportunity to establish their dependency while deeming another group to be dependent without an actual showing of dependency does not serve the purpose of preventing spurious claims); Zobel, supra, 457 U.S. at 61-62, 72 L.Ed.2d 672, 102 S.Ct. at 2313-14 (state's interest in providing financial incentive for individuals to establish and maintain Alaska residence "is not in any way served by granting greater dividends to persons for their residency during the 21 years prior to the enactment"); Williams v. Vermont, 472 U.S. at 24-27, 86 L.Ed.2d 11, 105 S.Ct. at 2472-74 (Vermont's sales and use tax structure did not serve the purpose of providing disincen-

tives to Vermont residents' purchasing outside the state); Hooper, supra, 472 U.S. at 619, 86 L.Ed.2d 487, 105 S.Ct. at 2866-67 (purpose of encouraging veterans to move to state not served by retroactive legislation; the legislation may actually have discouraged such moves).

Fourth, the purpose must help to explain why it is fair or reasonable for one person to suffer a greater burden or enjoy a greater benefit than another. This is the most critical element in the analysis of Proposition 13. It has already been discussed in detail. See WKR Amicus Brief I, at pages 9-16. To satisfy this element, the purpose must lead naturally or logically to the selection of the particular classification used in the enactment and provide a reason for the differential treatment; or looking at it from a different perspective, there must be a difference between the differently treated classes with respect to the purpose offered that provides a reason for the differential treatment.

With these elements in mind, the next step is to analyze Proposition 13 using the traditional equal protection test.

C. The goal of preventing people from being taxed out of their homes fails to justify the unequal treatment.

Perhaps the most emotionally laden justification offered for Proposition 13 is that the tax limitation measure was and is necessary in order to prevent people from losing their homes due to an inability to pay excessively high taxes. That is definitely a legitimate goal, and it provides a good reason for placing limits on tax increases. But on three counts, it does not provide a good reason for making the new buyers pay higher taxes than the long-term owners.

First, making new buyers pay higher taxes means that some people who otherwise could afford to buy a home will be unable to do so, because they can't afford the higher taxes; and some who can just barely afford to buy will be strapped to the limit and may have difficulty holding onto their new homes

because of the higher taxes. Yet getting a new home and keeping one's old home are actions that occur on the same continuum. Both of these actions are undertaken to satisfy the fundamental human need for shelter. Whether one is attempting to satisfy this need by holding onto one's old home or by getting a new home, the interest is the same and is entitled to the same protection. The fact that one person bought her home in 1975 while another bought in 1991 has no bearing at all on the existence or importance of this need when these individuals seek to satisfy it in 1991 by getting a new home or keeping an old one. Thus, the goal of helping the long-term owners keep their old homes in no way implies that it is appropriate to hinder new buyers from acquiring new homes. On the contrary, the basic need experienced by all homeowners demands that, if one person is given protection against high taxes, then all should be given a similar protection,

regardless of when they purchased their homes.

Second, hindering new buyers from getting and keeping new homes tends to defeat the goal of helping long-term owners keep their homes, since it makes it harder for people to become long-term owners with homes to keep.

Third, letting long-term owners pay low taxes while making new buyers pay high taxes protects those who already have a lot at the expense of those who in comparison have little or nothing. Where the issue relates to a basic need such as housing, such an approach turns basic concepts of fairness upside down. A 50-year old who, after years of scrimping and saving, is finally just barely able to buy her first home is surely entitled to at least as much protection from high taxes that threaten her ability to get or keep her home, as is the 50-year old who has enjoyed the good fortune of having owned a home for 15 years.

Therefore, the goal of protecting long-term owners from losing their homes to higher taxes fails to justify the Proposition 13 inequalities, because it does not provide a reason for making new owners pay higher taxes.

D. The goal of providing certainty and predictability fails.

Another purported justification -- one that was used in Amador Valley -- goes essentially like this (22 Cal.3d at 235):

Proposition 13 provides certainty and predictability in the computation of future taxes. It "enable[s] each property owner to estimate with some assurance his future tax liability."

As with the others, this is a seemingly plausible justification, but again, on closer analysis, it fails to do the job.

It may be conceded that the Proposition 13 tax computation formula in general serves the purpose of enabling property owners to estimate their future taxes with some reasonable degree of certainty and predictability. It must be noted, however, that there are many other formulas that would serve the purpose as well or better. For

example, at least one formula could be developed that would, with an equal degree of certainty and predictability, result in long-term property owners paying higher taxes than new buyers. And the simplest formula -- the one that gives the highest degree of certainty and predictability -- is to have everyone pay exactly the same amount of tax, year in and year out, with no discrimination at all.

The traditional equal protection test, of course, does not require that the state pick the formula that serves the asserted purpose best. It does, however, require that the purpose provide some semblance of a reason for selecting the discrimination that has been employed. Unfortunately for the supporters of Proposition 13, the goal of providing certainty and predictability does not provide even the faintest reason for selecting the formula that prefers long-term owners over new buyers. There is nothing in this goal that points to new buyers and suggests that they ought to pay higher taxes

than long-term owners. There is nothing in this goal that leads naturally or logically to choosing the Proposition 13 tax computation formula over any other formula. Indeed, if certainty and predictability were the only goal, then that goal points to another formula -- the formula under which taxes are the same each year and the same for everyone, without any discrimination. Furthermore, there is no difference whatsoever between new buyers and long-term owners with respect to the goal of achieving certainty and predictability. On the contrary, everyone is equally interested in certainty and predictability, so on that basis, everyone ought to be paying equal taxes.

The analysis of this case is very much like the analysis in Reed v. Reed, supra, 404 U.S. 71, 30 L.Ed.2d 225, 92 S.Ct. 251. There, while the classification in question served the goal of reducing the probate court's workload, that goal nevertheless failed to explain why men were chosen over women, since the stated goal could have been

served equally well by choosing women over men and there was no difference between men and women that had any bearing on any statutory purpose. Here, the goal of providing certainty and predictability likewise fails to explain why long-term owners are preferred over new buyers. The goal of providing certainty and predictability therefore fails to justify the Proposition 13 inequalities.

E. The goal of preventing increases in taxes fails.

Another justification offered for the Proposition 13 inequalities goes something like this: Each purchaser of property, beginning at the moment of purchase, has a legitimate and important interest in seeing that his or her property taxes do not increase significantly from one year to the next; Proposition 13 is designed to protect this interest by preventing large and unexpected increases in taxes.

There are at least two fatal flaws in this purported justification.

First, the Proposition 13 inequalities and the classification that creates them do nothing to prevent tax increases. Under Proposition 13, tax increases are prevented by fixing the tax rate at 1% of the assessed value and by limiting the yearly increases in assessed value to 2%. The inequalities are created by Proposition 13, however, only when the reassessment on sale provision is added into the formula in an economy where the yearly inflation exceeds 2%, so as to create huge differences in assessed values. The reassessment on sale provision classifies taxpayers by dividing them into groups based on the date of purchase, and at the same time, it creates the inequalities by letting early buyers pay low taxes and making later buyers pay high taxes. The reassessment on sale provision thus does not help prevent tax increases; rather, it directly facilitates tax increases. It causes an increase in the taxes payable with respect to any newly acquired property. It causes a tax increase for any long-term

owner who sells his old home and buys a new one -- even when the replacement home is of lesser value than the first home. It causes an increase in new taxes for all of the first time buyers who waited perhaps a month, perhaps a year or more longer than they originally anticipated before buying their first home. Had they bought earlier, their first-time taxes as well as their current year taxes would have been lower, and well do they know that fact.

The second fatal flaw resembles the flaw that undermines all of the other purported justifications: there is nothing in the goal of preventing tax increases that suggests that new buyers should have a base year or starting point for the computation of their taxes that is different from the long-term owners' base year or starting point, and there is nothing in that goal that suggests that new buyers should pay higher taxes than long-term owners. Similarly, there is no difference between the respective classes that suggests that

any difference in treatment is appropriate; on the contrary, all taxpayers are equally interested in avoiding tax increases, so they all should be treated equally with regard to the increases to which they are exposed.

Thus, the goal of preventing tax increases fails to justify the Proposition 13 inequalities.

F. The goal of increasing local revenues fails.

A final justification offered for Proposition 13's inequalities is this: Proposition 13's reassessment on sale provision and the inequalities that it creates help to raise local government revenues, thus providing a stable revenue source.

Clearly, in offering this as a justification, the defenders of Proposition 13 believe that the Equal Protection Clause requires only a pragmatic justification for any discrimination: if it works, use it. But such an approach would mean that any discrimination could be justified -- even a

formula that assigned different tax obligations to the various taxpayers by an outright lottery, or by some equivalent, such as by birth date, or by social security number, or by the first letter in one's last name -- or as under Proposition 13, by date of acquisition of property. Assigning tax amounts by lottery would certainly help raise money without imposing an undue burden on everyone.

Clearly, however, this view of the Equal Protection Clause is wrong. The rational relationship that must exist between the discrimination and the purpose offered to support it requires more than just a pragmatic connection. The purpose offered to support the discrimination must provide a reason not just for making some choice, but for making the particular choice actually made. And the reason must convey a sense that some approximation of fairness has been achieved. Any child knows that the bare need for money never explains why it is

fair or reasonable to take more from one person than from another.

G. Lumping several goals together fails.

Perhaps out of a subconscious understanding that there is no real justification for Proposition 13, the Jarvis and Gann organizations advance a unique argument in support of Proposition 13. First, citing Amador Valley, they argue that Proposition 13 is made up of four major elements that are interlocking and inseparable. HJTA Amicus Brief I, at page 7. Next -- and this is the unique aspect of the argument -- they argue that the purposes behind Proposition 13 are likewise interlocking and inseparable and must be considered together. HJTA Amicus Brief I, at pages 7-9, 11-14. The purposes they identify are those already discussed in this brief (above, pages 31 - 42) and in the previous brief by this amicus curiae (WKR Amicus Brief 1, pages 27-34). The picture they paint is of an intricate structure of policies and devices to further those policies that must be

considered as a whole, rather than one piece at a time.

The problem for these Proposition 13 defenders, however, is the same whether their cherished purposes are taken one at a time or as a group. Singly, none of the purposes explains why it is fair or reasonable to make new buyers pay higher taxes than long-term owners. And no wonders of alchemy occur when these purposes are added together and taken as a group: they still give no reason to hit the new buyer with high taxes. These Proposition 13 defenders make their best case with the pragmatic justification for Proposition 13, but under the Equal Protection Clause, that is not enough. In the end, the only likely effect of their argument will be to dig the grave deeper for Proposition 13 as a whole, when this court finds that one of its non-severable parts is constitutionally invalid.

H. Cleburne requires reversal of the lower court.

In Cleburne, supra, this court considered a local zoning ordinance which required

a special use permit to operate hospitals for the insane, feeble-minded, alcoholic, or drug-addicted persons in the R-3 zone, while allowing other kinds of hospitals, sanitariums, nursing homes, and convalescent homes, as well as fraternity and sorority houses and dormitories, in the R-3 zone without a special use permit. The operator of a home ("hospital") for mentally retarded ("feeble-minded") persons was denied a special use permit in that zone and sued the city, claiming an equal protection violation. 473 U.S. at 436-37, 87 L.Ed.2d 313, 105 S.Ct. at 3252.

The city offered several justifications for the special use permit requirement, among them, to protect against locating facilities in flood plains, to control residential densities, to avoid concentration of population, to lessen congestion on the streets, to protect against fire hazards, and to preserve the serenity of the neighborhood. 473 U.S. at 449-50, 87 L.Ed.2d 313, 105 S.Ct. at 3259-60. Clearly,

these were legitimate governmental purposes. Also, the special use permit requirement served these purposes by enabling the city to condition or deny applications that unduly threatened these public health and welfare concerns. To that extent, the classification in Cleburne served these legitimate governmental purposes.

One by one, however, the Cleburne court rejected each of these purposes, because none of them provided any reason at all for treating homes for the mentally retarded differently from the other group living facilities. The court stated:

"This concern with the possibility of a flood, however, can hardly be based on a distinction between the Featherstone home and, for example, nursing homes.... The question is whether it is rational to treat the mentally retarded differently. It is true that they suffer disabilities not shared by others; but why this difference warrants a density regulation that others need not observe is not at all apparent.... [T]he ordinance is aimed at avoiding concentration of population and at lessening congestion of the streets. These concerns obviously fail to explain why apartment houses, fraternity and sorority houses, hospitals, and the like, may freely locate in the area without a permit...."

473 U.S. at 449-50, 87 L.Ed.2d 313, 105 S.Ct. at 3259-60.

The problem in the present case is the same as the problem in Cleburne. Proposition 13 is designed to serve a number of legitimate governmental purposes, and it does in fact serve them. But none of these purposes provides a reason for treating new buyers differently from long-term owners. None of the legitimate concerns underlying Proposition 13 is based on any distinction between new buyers and long-term owners. And, while there are some differences between new buyers and long-term owners, there is no difference between them that warrants imposing higher taxes on new buyers than on long-term owners. As in Cleburne, then, the unequal treatment found in the present case cannot be sustained.

VII. CONCLUSION.

The justifications that have been offered for Proposition 13, through their failure to do the job, show clearly the true

nature of Proposition 13: it is an opportunistic grab into every California real estate escrow. The state grabs out of each escrow not just immediate cash, but an enduring commitment to pay taxes in the amounts set at that time. New buyers have the motivation to pay the taxes, however unfair the taxes might be; they have the money to pay the taxes demanded of them; and their choices are severely limited. Further, Proposition 13 confers real benefits on just enough people, holds out enough hope to others, and camouflages its inequities well enough, so that most people would pay rather than fight.

New buyers are motivated to buy property. Ownership of one's home is the American dream. From a social, financial, and psychological perspective, the advantages of owning one's home for most people so far outweigh the alternative that, when the opportunity presents itself, people will buy. The purchase price of the house itself is the major expense, and new buyers are not

going to quibble about a smaller item such as taxes, particularly when they have no choice about that item. In a sense, not having to quibble about taxes is a relief, for there are enough sources of anxiety to go around whenever one purchases a house. So making new buyers pay higher taxes grabs them at a point where they are particularly vulnerable. They really have no option: even though they don't like the tax inequalities, they can't refuse to buy.

New buyers have the money to pay the taxes, for one simple reason: fortunately for the state, there is an army of commercial lenders whose commodity -- loans to help buy houses -- is essential in the purchase of most homes. These commercial lenders do their best to make sure that no one buys a house with their loans unless the buyer can afford to pay all the monthly payments -- mortgage, insurance, and taxes. The state can set taxes as high as it wants, and the army of lenders will do its job, making sure that only those buyers qualify

who have sufficient ability to pay. Everyone else is simply swept under the rug.

When the defenders of Proposition 13 argue that Proposition 13 is fair because the new buyers are able to pay the high taxes, the answer is, "Of course, they are able to pay the high taxes. The lenders -- not the Proposition 13 tax computation formula -- make sure of that." But the lenders do not make similar determinations in the current year for other current year taxpayers.

Therefore, the fact that new buyers are able to pay the current year's high taxes says nothing about the ability or inability of others to pay, and it doesn't make Proposition 13 fair or reasonable.

New buyers' choices are severely restricted. While they can choose from the properties that are available in the current year at current year prices, obviously they cannot go back in time and choose from properties at 1975 prices. They are stuck in the current year real estate market, unless they want to wait, hoping for an

economic catastrophe that would drive prices back down to 1975 levels. The more likely prospect, however, is that prices may remain fairly stable or decline slightly in the short run and go up even higher in the long run.

Proposition 13 offers real benefits to some, and the hope for future benefits to others. Those who bought in 1975 or before clearly benefit from Proposition 13 -- and many of these people still own their homes. Others who bought later than that, while still in the early stages of rapid inflation, also benefit from Proposition 13, though in lesser degrees. However, in recent years, inflation of housing prices has slowed somewhat. Proposition 13 now offers to the new buyer a lottery's chance that later buyers will get stuck holding a bigger tax bill, with no assurances that such will soon be the case. Today's new buyers may spend their entire time of home ownership in the highest tax brackets, and some of these will no doubt sell just before

rapid inflation begins again. In any event, however, none of these real or anticipated benefits negates or justifies the real inequalities that occur under Proposition 13. Rather, the very existence of these benefits depends upon the inequalities created by Proposition 13 and is indeed the very source of the injury to those who do not receive these benefits.

Proposition 13 camouflages its inequities well. In every real estate escrow, there are many fingers in addition to the seller's, reaching in to take money out: loan fees, prior liens, termite inspections, homeowner's insurance, title insurance, escrow fees, recording fees, as well as taxes. Nearly all of these fingers are private sector fingers, and none of these private sector fingers are subject to the constitutional requirement of equal protection. They can be as arbitrary as they want -- and they are, and the buyer knows it. It is very easy in this context to minimize the arbitrariness of Proposition 13's real

estate taxes -- the arbitrariness of these taxes is no different in degree from the arbitrariness of the purchase price paid by the buyer to the seller for the home itself. So what harm if Proposition 13's taxes are not fair? Who said life was fair? Unfortunately for the defenders of Proposition 13, and fortunately for the rest of us, government is not permitted to act arbitrarily. The constitution, of course, does not favor one social or economic theory over another, and it permits the states wide leeway to implement any kind of theory the state deems appropriate. But there is one economic or social theory that the states are not free to implement, and that is the theory that says government can act like the private sector without restraint from the Equal Protection Clause.

Without a doubt, the facts presented by Petitioner show that Proposition 13 violates the Equal Protection Clause. It treats people unequally, the inequalities keep getting worse, and there is no justification

for that unequal treatment. It is plainly and simply an opportunistic approach to taxation, not based even remotely on any principle of fairness or reason. In holding otherwise, Amador Valley was wrong and should therefore be disapproved. In the present case, the trial court's decision sustaining the demurrer was wrong, and the court of appeals decision upholding the trial court was wrong. These decisions must be reversed. Proposition 13 should be declared invalid.

Dated: December 16, 1991

Respectfully submitted,

William K. Rentz

JAN 28 1992

OFFICE OF THE CL

No. 90-1912

In The
Supreme Court of the United States
October Term, 1990

STEPHANIE NORDLINGER, an individual,
Petitioner,
v.

KENNETH HAHN, in his capacity as Tax Assessor
for the County of Los Angeles and the
COUNTY OF LOS ANGELES,
Respondents.

On Writ Of Certiorari To The
Court Of Appeal Of California

AMICUS CURIAE BRIEF OF HOWARD JARVIS
TAXPAYERS FOUNDATION AND 31 ELECTED
CALIFORNIA OFFICIALS IN SUPPORT OF
RESPONDENTS KENNETH HAHN, ASSESSOR FOR
THE COUNTY OF LOS ANGELES AND THE
COUNTY OF LOS ANGELES

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IDENTITY AND INTERESTS OF AMICI

Pursuant to Supreme Court Rule 37, Howard Jarvis Taxpayers Foundation (HJTF) and 31 elected California officials submit this brief amicus curiae in support of respondents Kenneth Hahn and the County of Los Angeles. Although there have been a number of other amicus briefs filed in this case in support of respondents, the purpose of this brief is quite narrow. This brief will address solely the issue of retroactivity in the event this Court invalidates Article XIII A of the California Constitution.

Written consent to the filing of this brief has been granted by counsel for all parties. Copies of the letters of consent have been lodged with the clerk of this Court.

The Howard Jarvis Taxpayers Foundation (HJTF) is a nonprofit, tax-exempt California corporation. It is a research and educational organization affiliated with, but separate from, the Howard Jarvis Taxpayers Association which has filed a separate brief on the merits in this case. HJTF recently commissioned four separate studies to provide alternatives that would protect taxpayers if Article XIII A were overturned by this Court. Those studies were conducted by Dr. Art Laffer, Professor Craig Stubblebine of Claremont-McKenna College, Professor Gary Galles of Pepperdine University, and Professor Alvin Rabuska of the Hoover Institute. While each study identified an alternative to Article XIII A, each study concluded that Article XIII A in its current operation is the preferred system of property taxation for the State of California.

Assemblyman Jim Brulte; Assemblyman Chris Chandler; Assemblyman Ross Johnson; Assemblyman

Mickey Conroy; California State Board of Equalization Vice Chairman Ernest J. Dronenburg; Assemblyman Tom Mays; Assemblyman Richard Mountjoy; Senator Edward Royce; Assemblywoman Paula Boland; Senator Marian Bergeson; Senator John Lewis; Assemblyman Bill Lancaster; Senator Cecil Green; California State Board of Equalization Member Matthew Fong; Senator Robert Beverly; Senator Lucy Killea; San Mateo County Assessor Roland Giannini; Assemblyman Bill Filante; Senator Bill Leonard; Assemblywoman Andrea Seastrand; Senator Daniel Boatwright; Senator Bill Lockyer; Senator Ruben Ayala; Senator Frank Hill; Assemblyman Paul Horcher; Senator Quentin Kopp; Assemblywoman Jackie Speier; Assemblyman Tom McClintock; Assemblyman Phillip Wyman; Assemblywoman Doris Allen; and United States Senator John Seymour are officials elected to office in the State of California. Amici elected officials consist of republicans, democrats and an independent.

OPINION BELOW

The opinion of the California Court of Appeal is reported at 225 Cal. App. 3d 1259 (1990).

STATEMENT OF THE CASE

Petitioner filed this action in the Los Angeles County Superior Court on September 18, 1989, against the County of Los Angeles and the county assessor. The trial court sustained respondents' demurrer without leave to amend and judgment was entered against Petitioner. The

judgment was upheld by the California Court of Appeal for the Second Appellate District in a published decision. Petitioner's Petition for Review to the California Supreme Court was denied on February 28, 1991.

STATEMENT OF FACTS

Petitioner is a resident of the City of Los Angeles who purchased her home in 1988 for \$170,000. Upon purchase, her house was reassessed to current market value as required by Article XIII A of the California Constitution. Under the terms of Article XIII A, Petitioner will pay annually a maximum property tax of 1% of value.¹ In addition, future increases in the taxable value of Petitioner's property will be limited to 2% annually. There is no dispute that Petitioner's tax liability is based on the price she voluntarily paid for her home or that she was fully aware of the tax consequences of her purchase.

The precise relief sought by Petitioner is unclear, even to Petitioner. On one hand, Petitioner appears to seek a refund of taxes in an amount equal to that which she would be entitled if there were no reassessment at all upon change of ownership. In other words, under the theory of her case as reflected by the complaint, she appears to seek a rollback of her assessed value to the Article XIII A base year reflected by the 1975-76 assessment rolls. In her brief on the merits, however, Petitioner seems to seek some sort of reassessment of all California

¹ The 1% may be exceeded only for voter approved indebtedness. *Cal. Const.*, art. XIII A, § 1(b).

properties with a reduction in tax rate to achieve "revenue neutrality." Petitioner's Brief on the Merits at 49-50.

SUMMARY OF ARGUMENT

It is Amici's primary position that Article XIII A fully comports with the Equal Protection Clause of the United States Constitution and that the issues presented in this brief need not even be addressed. If, however, Amici are incorrect and a majority of this Court concludes that California is not free to adopt an acquisition value based system of property taxation, then Amici believe that this Court should specify that its ruling be applied prospectively only. If this Court does not so specify the prospective application of a ruling striking Article XIII A of the California Constitution, it should, at a minimum, leave the issue of remedy to the courts and legislative body of the State of California.

ARGUMENT

A ruling by this Court that Article XIII A somehow violates the Equal Protection Clause of the United States Constitution would, of course, be disastrous in its own right. *Infra* at 11-12. The ill effects of such a ruling, however, would be immeasurably compounded if it were to be applied retroactively. Should this Court's ruling strike down California's deliberately chosen method of property taxation, existing decisional law from this Court provides an ample basis for applying such a ruling prospectively only. If this Court disagrees and finds that it

cannot specify that a negative ruling be applied prospectively, then it should leave the issue of remedy to the State of California.

I

IF THIS COURT INVALIDATES ARTICLE XIII A OF THE CALIFORNIA CONSTITUTION, IT SHOULD SPECIFY THAT ITS RULING IS NOT TO BE APPLIED RETROACTIVELY

The issue of whether decisions invalidating state taxes as violative of the federal constitution should be applied retroactively continues to be troublesome and complex for both the courts and practitioners.² However, as applied to the potentiality that Article XIII A of the California Constitution violates the Equal Protection Clause, the case law suggests that such a ruling may be applied prospectively only.

This Court has recently issued three major rulings relating to retroactivity of tax decisions. In *McKesson v. Div. of Alcoholic Beverages & Tobacco*, ___ U.S. ___, 110 S. Ct. 2238 (1990) a distributor of alcoholic beverages brought an action against Florida officials challenging the state's tax rate preferences for products using crops commonly grown in Florida. The Florida trial court, relying on this Court's decision in *Bacchus Imports, Ltd v. Dias*,

² See, e.g., Hellerstein, *Supreme Court Settles Some State Tax Issues While Creating Other Problems*, Journal of Taxation, September 1991, at 180; Tatarowicz, *Right to Refund for Unconstitutionally Discriminatory State Taxes and Other Controversial State Tax Issues Under the Commerce Clause*, 41 Tax Lawyer 102 (Fall 1987).

468 U.S. 263, 104 S. Ct. 3049 agreed with McKesson and enjoined future enforcement of the preferential tax rate reductions. However, the trial court, as well as the Florida Supreme Court in its affirmance, refused to grant retroactive relief.

In finding that prospective relief was inadequate to protect McKesson's constitutional rights, this Court concluded that

"if a State penalizes taxpayers for failure to remit their taxes in timely fashion, thus requiring them to pay first and obtain review of the tax's validity later in a refund action, the Due Process Clause requires the State to afford taxpayers a meaningful opportunity to secure post-payment relief for taxes already paid pursuant to a tax scheme ultimately found unconstitutional." *Id.* at 2242.

Because McKesson was required to pay the tax in order to mount a legal challenge, injunctive relief was deemed inadequate.

Other retroactivity issues were addressed in a ruling decided contemporaneously with *McKesson*. In *American Trucking Association, Inc. v. Smith*, ___ U.S. ___, 110 S. Ct. 2323 (1990) this Court was highly divided over the issue of whether a taxpayer was entitled to retrospective relief prior to the date of an earlier decision that overturned precedent in establishing the taxpayer's Commerce Clause claims. In *American Trucking*, out-of-state trucking interests sued Arkansas officials over the state's highway excise tax. The tax, computed in a manner which imposed greater per-mile costs on out-of-state truckers, was upheld by Arkansas state courts. However, the decision

of the Arkansas Courts was remanded in light of this Court's decision in *American Trucking Associations, Inc. v. Scheiner*, 483 U.S. 266, 107 S. Ct. 2829 (1987) which held that unapportioned flat highway use taxes penalize travel within a free trade area among the States in violation of the Commerce Clause. In the subsequent case, this Court had to determine whether its previous decision in *Scheiner* applied retroactively to taxation of highway use prior to the date of that decision. A plurality of this Court said no.

This Court first noted that "[t]he determination whether a constitutional decision of this Court is retroactive - that is, whether the decision applies to conduct or events that occurred before the date of the decision - is a matter of federal law." *American Trucking*, 110 S. Ct. at 2330. Moreover, whether retroactivity is required in federal cases depends on application of the standard announced in *Chevron Oil Co. v. Huson*, 404 U.S. 97, 92 S. Ct. 349 (1971). *Id.* at 2331.

Chevron Oil governs retroactivity issues and is comprised of a three part test.

1. "First, the decision to be applied nonretroactively must establish a new principle of law, either by overruling clear past precedent on which litigants may have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed."
2. "Second, [the court] must . . . weigh the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation."
3. "Finally, [the court must weigh] the inequity imposed by retroactive application, for where a

decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in [United States Supreme Court] cases for avoiding the injustice or hardship by a holding of nonretroactivity." 404 U.S. at 106-107, 92 S. Ct. at 355.

In applying *Chevron Oil* to the facts in *American Trucking*, this Court concluded that *Scheiner's* invalidation of flat rate highway excise taxes would not apply to the taxation of highway use before that case was decided.

Finally, in *James B. Beam Distilling Co. v. Georgia*, ___ U.S. ___, 111 S. Ct. 2439 (1991) this Court was confronted with another case involving tax preferences for alcoholic beverages which consist of products produced within the taxing jurisdiction. Again, this Court was highly divided (as evidenced by five separate opinions issued in the case) over how the retroactivity issue should be resolved. Justice Souter, announcing the judgment of the court and with Justice Stevens concurring, stated that "it is error to refuse to apply a rule of federal law retroactively after the case announcing the rule has already done so." 111 S. Ct. at 2446. Although the other opinions filed in *Beam* took exception to some or all of Justice Souter's analysis, it can be stated safely that a majority of this Court would apply the principles of *Chevron Oil* to retroactivity issues. (See, e.g., 111 S. Ct. at 2451, dissent of Justice O'Connor with whom the Chief Justice and Associate Justice Kennedy concurred).

If this Court concludes that the reassessment upon change of ownership provision of Article XIII A is unconstitutional it should, under the principles of *Chevron Oil*, make its ruling prospective only. Under the first part of

the *Chevron Oil* test, a decision to be applied nonretroactively must establish a new principle of law. That prong of *Chevron Oil* would be met clearly if this Court were to invalidate Article XIII A. Under a long line of cases, this Court has repeatedly stated that states are afforded great latitude in devising systems of taxation. *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973). See, e.g. *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 88 (1940) ("in taxation, even more than in other fields, legislatures possess the greatest freedom in classification" (footnote omitted)); and *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (1959) ("the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interest").

This Court's ruling in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336, 109 S. Ct. 633 (1989) would not change the radically novel nature of a ruling striking down Article XIII A. Indeed, this Court expressly stated in *Allegheny Pittsburgh* that it was *not* addressing a situation where the reassessment upon change of ownership provision was "the law of a state generally applied."

The first prong of the *Chevron Oil* test also involves the question of whether the ruling "decid[es] an issue of first impression whose resolution was not clearly foreshadowed." *Id.* at ___. In this case, there has been no basis to anticipate that Article XIII A is unconstitutional. In addition to the authority cited above, *no court has ever held that an acquisition value based system of property taxation deliberately chosen by a state is unconstitutional*. Indeed, this issue was litigated in California more than a decade ago. *Amador Valley Joint Union High School District v. State*

Board of Equalization, 22 Cal. 3d 208 (1978). Moreover, none of the state court decisions in the wake of *Allegheny Pittsburgh* found a constitutional violation.

The second prong of *Chevron Oil* is the balancing of "the merits and demerits in each case by looking to the prior history of the rule in question, its purpose and effect, and whether retrospective operation will further or retard its operation. 404 U.S. at 106-107.³ The prior history of the "rule" invalidating acquisition value based property tax systems, to the extent it exists at all, is found solely in this Court's decision in *Allegheny Pittsburgh*. Its purpose, under petitioner's theory, is to achieve a particular sort of tax equity."⁴ Retroactive application of the new rule of law in this case would serve no useful purpose. Assuming this Court did find Article XIII A to violate the Equal Protection Clause, the purpose of the rule would be adequately advanced by prospective relief only.

The final *Chevron Oil* factor is a consideration of the equities involved. As this Court stated, "where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the injustice or hardship by a holding of nonretroactivity." *American Trucking*, 110 S. Ct. at 2332

³ The viability of *Chevron Oil*'s second prong is questionable in light of *James B. Beam*. In that case, at least a plurality of this Court indicated outright rejection of selective or "modified" prospectivity.

⁴ Of course, it is amici's contention that acquisition value based taxation is more equitable than traditional current market value systems.

citing *Chevron Oil*. Because "the invalidation of the State's HUE tax would have potentially disruptive consequences for the State and its citizens," this Court ruled in *American Trucking* that the decision should not be applied retroactively.

While the potential disruptive effects to Arkansas and its citizens were significant in *American Trucking*, they pale in comparison to what would happen in California if a negative Article XIII A ruling were applied retroactively. The California Assessors' Association (CAA) has already filed a brief in this case outlining the disastrous impacts on the State of California if Article XIII A is declared unconstitutional. Brief of Amicus Curiae California Assessors' Association In Support of Neither Party at 4. Among just a few of the potential impacts would be an immediate *tax increase of \$11-13 Billion*. Moreover, according to the assessors, if "escape assessments" are required because of this Court's ruling, this could require "as much as 30 Billion dollars in back tax liability, with attendant public turmoil, outrage, and serious hardship to people who could not afford, or are unable to pay, unanticipated major tax increases." *Id.*

In addition to the potential for a huge tax increase and collection of billions of dollars in back taxes, implementing a retroactive decision would be administratively staggering. According to the assessors, there would be only 1,736 property appraisers to reassess over 9.7 million parcels of real property in the State of California. *Id.* at 5. "[T]his too would entail substantial administrative costs and could at some point run into independent constitutional restrictions." *American Trucking* at 2333.

Amici herein will not repeat the points contained in the cogent brief filed by the California Assessors' Association. Amici herein wish only to endorse the points contained in that brief and suggest to this Court that CAA provides a realistic, albeit frightening, scenario of the potential impacts of this case. Moreover, the County Assessors' Brief should be viewed as highly authoritative. First, it is the membership of that organization which will be burdened with the implementation of *any* decision of this Court (whether retroactive or not) invalidating Article XIII A. In short, CAA's expertise on this issue cannot be ignored. Second, although CAA has a substantial stake in the outcome of the case, it has endorsed neither side with respect to the underlying merits. In this regard, CAA can be considered a neutral participant.

It is amici's principle position that, on the merits, this Court should rule for respondents. However, if a majority of this Court is inclined to find that Article XIII A of the California Constitution violates the Equal Protection Clause, then this Court should specify that its ruling is to be given prospective application only.

II

IF THIS COURT INVALIDATES ARTICLE XIII A OF THE CALIFORNIA CONSTITUTION AND DOES NOT SPECIFY THAT ITS RULING IS TO BE APPLIED PROSPECTIVELY ONLY IT SHOULD, AT A MINIMUM, LEAVE THE ISSUE OF REMEDY TO THE STATE OF CALIFORNIA

It is certainly within the power of this Court, under the principles of *Chevron Oil*, to rule that any decision invalidating Article XIII A of the California Constitution

would be applied prospectively only. However, this Court has also noted that the issue of remedy in the invalidation of state taxes on federal constitutional grounds may also appropriately be left to the states. "When we have held state taxes unconstitutional in the past it has been our practice to abstain from deciding the remedial effects of such a holding. While the relief provided by the State must be in accord with federal constitutional requirements, [citation omitted] we have entrusted state courts with the initial duty of determining appropriate relief. Our reasons for doing so have arisen from a perception based in consideration of federal-state comity." *American Trucking*, 110 S. Ct. at 2330.

If this Court decides not to resolve the retroactivity issue it should, at a minimum, leave the issue of remedy to the State of California.

CONCLUSION

There is little dispute that a ruling from this Court upsetting the carefully balanced and deliberately chosen method of taxing property in the State of California would result in fiscal chaos. That chaos and hardship, however, would be greatly intensified if such a ruling were applied retroactively. For the reasons stated above, if a majority of this Court concludes that California is not free to adopt an acquisition value based system of property taxation, then amici believe that this Court should specify that its ruling be applied prospectively only. If this Court does not so specify the prospective application

of a ruling striking Article XIII A of the California Constitution, it should not specify retroactivity, but rather leave the issue of remedy to the courts and legislative body of the State of California.

DATED: January, 1992

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IN THE
Supreme Court of the United States
October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Assessor
for the County of Los Angeles
and the COUNTY OF LOS ANGELES,

Respondents.

On Writ of Certiorari to the
Court of Appeal of the State of California

**MOTION FOR PERMISSION TO FILE BRIEF AS
AMICI CURIAE AND BRIEF OF THE UNITED STATES
JUSTICE FOUNDATION AND JAMES V. LACY AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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In The
Supreme Court of the United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,

v.

Petitioner,

KENNETH HAHN, ET AL.,

Respondents.

MOTION OF THE UNITED STATES JUSTICE FOUNDATION
AND JAMES V. LACY FOR LEAVE TO FILE BRIEF
AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

The United States Justice Foundation (the "USJF") and James V. Lacy (collectively "Amici") move pursuant to Rule 37 of the Rules of this Court for leave to file the accompanying brief as *amici curiae* in support of respondents. Amici sought written consent from petitioner and respondents; respondents consented, but petitioner refused. Amici filed respondents' written consent with the Clerk of the Court.

Amici include Mr. Lacy and the USJF. Mr. Lacy was a close associate and advisor to Howard Jarvis, the co-author of Proposition 13, during the campaign to adopt the initiative. The USJF, a non-profit California corporation, was founded in 1979 by supporters and a former associate of Howard Jarvis, and is dedicated to the preservation of property, civil and human rights. The interests of movants as *amici curiae* are more fully described in the accompanying brief (pp.3-4).

Amici have devoted much of their professional efforts to promote the principles and policies of Proposition 13. Amici's active involvement in the evolution of Proposition 13, enable them to provide this Court with an important perspective. In its brief, Amici address the general question of the equal protection challenge to Proposition 13, and specifically discuss the constitutional implications of the similarity of Proposition 13's formula for property taxation and the formula used by the Internal Revenue Service.

In addition, Amici discuss the importance of maintaining the independence of state tax systems and the likely consequences of this Court's interference with Proposition 13.

Amici respectfully request leave to file this brief as *amici curiae* in support of respondents.

Respectfully submitted,

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**BRIEF AMICI CURIAE OF THE UNITED STATES JUSTICE
FOUNDATION AND JAMES V. LACY
IN SUPPORT OF RESPONDENTS**

THE UNITED STATES JUSTICE FOUNDATION AND
JAMES V. LACY SUBMIT HERewith THEIR BRIEF *AMICI
CURIAE* IN SUPPORT OF RESPONDENTS.

I. INTERESTS OF THE AMICI CURIAE

Pursuant to Supreme Court Rule 37, the United States Justice Foundation, a California corporation (the "USJF") and James V. Lacy, an individual, submit the following brief *amici curiae* in support of respondents Kenneth Hahn and the County of Los Angeles.

The USJF is a non-profit, tax-exempt California corporation, dedicated to the preservation of property, civil and human rights. The USJF was founded by supporters and a former associate of Howard Jarvis, the co-author of Proposition 13. The USJF has been active in defending tax limitation proposals in California and throughout the United States. With the assistance of volunteer lawyers, the USJF regularly represents individuals and classes on a *pro bono publico* basis, not only redress individual acts of injustice, but also to promote the fairness of governmental conduct and important public policy concerns.

James V. Lacy is a native of California who has dedicated his working career to reducing the size of government. Mr. Lacy served as a principal aide to Howard Jarvis during the Proposition 13 campaign where he helped qualify and pass the initiative. Mr. Lacy also provided legal advice during the implementation process for Proposition 13. He is in a position to bear witness as to the issues and policy concerns that were discussed during the campaign to adopt and implement Proposition 13. After passage of Proposition 13, Mr. Lacy helped found the USJF to insure, among other important purposes, that the spirit and intent of Proposition 13 would be defended and maintained. Most recently, Mr. Lacy served in the Bush Administration as Chief Counsel for Technology in the Department of Commerce.

II. SUMMARY OF THE ARGUMENT

In June, 1978, California voters amended their Constitution to include Article XIII A, commonly known as Proposition 13. Proposition 13 is a historic measure aimed at increasing governmental accountability and improving fiscal responsibility by altering the way property is taxed in California.

Before Proposition 13, property taxes were based on annual current market assessments and fluid tax rates which resulted in unpredictable fluctuations in taxes. Worse, property owners were taxed on the unrealized gains in the value of the property. Individuals often faced the choice of borrowing against their home to pay the property tax or selling their home. Because borrowing against a home is difficult for persons with fixed or low incomes, the pre-Proposition 13 tax system resulted in many people being taxed out of their homes.

As explained by the California Supreme Court in affirming its constitutionality, Proposition 13 "consists of four major elements: a real property tax rate limitation (§1), a real property assessment limitation (§2), a restriction on state taxes (§3), and a restriction on local taxes (§4)." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 231 (1978) (emphasis in original). Each provision is "interrelated and interdependent, forming an interlocking 'package' . . . to assure real property tax relief." *Id.* Under Proposition 13, California property owners are no longer taxed on the unrealized gains of their property, and the

maximum rate of taxation is fixed. With Proposition 13, California discarded its former current-value tax system and enacted an acquisition value tax system in which the tax basis is the purchase price of the property instead of the annual current-value assessment.

This acquisition value tax system treats property like the Internal Revenue Service treats property. Pursuant to the Internal Revenue Code ("IRC"), the basis of a capital asset is the purchase price, and tax is imposed only when the asset is sold or "realized." See 26 U.S.C. §1001. Similarly, Proposition 13 uses the purchase price as its basis for taxation and allows for a 2% annual increase of the tax basis to insure that local governments have adequate and ever-increasing revenues. Additional revenues can be obtained with voter approval. Using this relatively fixed tax basis, the government then taxes property at a rate of 1% each year.

Proposition 13's formula has remained overwhelmingly popular with the electorate in California for the past 13 years. The instant case is a challenge by the same entities who opposed Howard Jarvis, Paul Gann and the California voters in 1978. This time, Proposition 13's opponents are cloaking their opposition to the policies and fiscal consequences of Proposition 13 in the garb of a constitutional challenge. This litigation is an attempt to gain in the courtroom what these groups have consistently lost at the ballot box.

While intelligent people may disagree as to the most productive manner of taxation, such issues should be resolved by the electorate and the popularly-elected legislature, not an independent federal judiciary. Petitioner and supporting *amici* have equal access to the initiative process and could repeal Proposition 13, but the initiative process is precisely what petitioner and supporting *amici* object to.

Traditionally, this Court has deferred to states the ability to tax their own people. While California's tax policy may differ from other states, it is this freedom of the states to adopt different state policies that is at the core of our federal system of government. In *McCulloch v. Maryland*, 17 U.S. 316 (4 Wheat 1819), Chief Justice John Marshall wrote:

[T]he power of taxing the people and their property is essential to the very existence of government, and may be

legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may chuse [sic] to carry it. The only security against the abuse of this power, is found in the structure of the government itself. *Id.* at 428.

If this Court strikes down Proposition 13, it strikes at the heart of the federal system. If we are to maintain our federal system, states, with the consent of their people, must be allowed to make independent decisions concerning taxation.

To overcome the strong presumption of deference to states in tax matters, petitioner must show a constitutional violation, not merely a disparate impact from a tax system which is neither arbitrary nor capricious. If this Court treats policy arguments as constitutional violations, it will open the floodgates of litigation to continued challenges concerning state tax issues and this Court will have to reallocate scarce federal judicial resources toward the creation of an omnibus property tax review court. If the Court chooses to move in this direction, it should hire a slew of assessors and surveyors, purchase a gaggle of green shade visors and sign up for some frequent flier programs, because if Proposition 13 is unconstitutional because of difference in assessment levels, then so too is every other state property or sales tax and this Court will become the final arbitrator of each state and locality's tax policy.

III. PROPOSITION 13 DOES NOT VIOLATE THE CONSTITUTION'S EQUAL PROTECTION CLAUSE.

Petitioner claims Proposition 13's method of property tax assessment violates the equal protection clause of the Constitution.¹ Petitioner asserts that Proposition 13 merely grafted a "welcome stranger" component onto the former current-value scheme of property taxation and therefore discriminates against people who move to California. Petitioner's Brief at 2, 14-16. Specifically, petitioner alleges that newcomers to California do not receive the same tax treatment as people who already own property because the

¹ Petitioner does not challenge the 1% tax rate cap or any other feature of Proposition 13. Petitioner's Brief on the Merits ("Petitioner's Brief") at 2, fn.1.

newcomer's baseline tax assessment year is more recent than the baseline year of those already owning property.² Petitioner argues that this results in an unconstitutional denial of equal protection.

This argument, however, entirely lacks merit. Proposition 13 treats all similarly situated taxpayers the same — regardless of whether they are recent arrivals to the state or natives buying a new residence. Nothing in the equal protection clause or related Court cases requires state property taxes to produce equal results; rather, there must be "rough equality in tax treatment of similarly situated property owners." *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 396, 343 (citing *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526-27 (1988)). The California Supreme Court found such "rough equality" to exist when it considered the constitutionality of Proposition 13: "[Proposition 13] introduces a roughly comparable tax system with respect to real property, whereby the taxes one pays are closely related to the acquisition value of the property." *Amador Valley*, 22 Cal. 3d at 236.

Not only does Proposition 13 create "rough equality," but any resulting disparity is a consequence of the state's attempt to avoid the grossly unfair annual fluctuations and unrealistic burdens placed on taxpayers under the prior system. Before Proposition 13, California taxed property owners on the current-value of their property, even though they could not realize the ever-increasing value of their property until it was sold. Property owners who could not afford to sell their property and realize their gain were perennially taxed on "assets" they would never possess. It was precisely this unfair treatment of similarly-situated property owners that in part prompted the California voters to adopt Proposition 13.

A. PROPOSITION 13 DOES NOT CREATE A SUSPECT CLASSIFICATION.

Petitioner's initial claim is that Proposition 13 improperly creates and unfairly taxes a class of taxpayers, namely recent arrivals to the state. This is not true. Proposition 13 simply does not

² For example, if two identical parcels of land were bought two years apart in a rapidly appreciating market, the person who bought first would likely have a lower property tax assessment than the person who bought two years later.

create a suspect classification. Under Proposition 13, tax assessments are tied to the property, not to the individual. Pursuant to this acquisition value tax system, long-time residents who purchase land this year are treated in exactly the same manner as recent arrivals who purchase property this year.

Petitioner's argument relies in part on *Allegheny Pittsburgh*, which held that under a state scheme of property taxation, property owners must be treated in a similar manner. 488 U.S. at 343. Petitioner asserts that the Webster County taxation scheme struck down in *Allegheny Pittsburgh* is virtually identical to Proposition 13 and should likewise be found unconstitutional. Petitioner's Brief at 11. However, this Court did not find that the property tax scheme in West Virginia created suspect classifications. *Id.* at 345. Rather, the Court found that the West Virginia tax system violated the equal protection clause because the county assessor violated the West Virginia constitution and the assessors's own administrative regulations by applying the tax classifications in an arbitrary manner. *Id.* Significantly, this Court accepted as constitutional the underlying basis of an acquisition value tax system. *Id.* at 343.

In *Allegheny Pittsburgh* this Court held that the *administration* of the West Virginia tax system to be unconstitutional — not the *system* itself. This Court ruled against Webster County because the actions of a rogue assessor violated the West Virginia constitution. This Court cited violations of the state constitution and improper administrative practices which infringed upon the equal protection clause. 488 U.S. at 345. Nowhere in Petitioner's Brief, however, does she allege that any California official has acted arbitrarily, capriciously or in violation of Proposition 13's guidelines and rules in administering property taxation pursuant to Proposition 13.

Petitioner's second equal protection argument is that Proposition 13 creates an unconstitutional barrier to travel between states. In support, petitioner cites *Zobel v. Williams*, 457 U.S. 55 (1982), in which this Court arguably strengthened its test for evaluating equal protection claims. Even under *Zobel*, however, Proposition 13 survives the equal protection and barrier to travel challenges.

Zobel challenged the constitutionality of an Alaskan statutory scheme to distribute income, in varying amounts, based on the length of each citizen's residency. *Zobel*, 457 U.S. at 56. While

petitioner admits that property ownership is not equivalent to residency, she attempts to analogize the two. Petitioner's Brief at 40. This analogy is inappropriate. Property ownership is not closely linked to residency. Many long-time California residents will never purchase property, while recent arrivals to California often purchase property immediately. Every day long-time property owners sell their homes and purchase another, just as new arrivals do. *Zobel* was concerned with *permanent* classifications of people — a system that does not exist under Proposition 13. *Zobel*, 457 U.S. at 59. The classifications under Proposition 13 are fluid and are not aimed at any particular group of people. To the contrary, *any* individual, whether a resident or out-of-state arrival, who buys property is subject to the *same* tax treatment. Without permanent classifications, there is no equal protection violation.

Zobel's equal protection claim rested on the ground that Alaska's statute unfairly created a barrier to travel. Yet empirical data effectively demonstrates that Proposition 13 is not a barrier to travel. As a long-time California resident, petitioner must be aware of the population explosion that has occurred in the past 13 years.³ This enormous population growth certainly cuts against any claim that Proposition 13 has complicated migration to California. Moreover, to the extent that Proposition 13 discourages migration, its burden is shared by any long-time resident who similarly buys property. Unlike the petitioner in *Zobel*, long-time California residents and new arrivals to California are treated in exactly the same manner. Burdens and benefits are received equally by all similarly situated individuals.

B. ANY CLASSIFICATIONS UNDER PROPOSITION 13 ARE NOT ARBITRARY AND CAPRICIOUS AND ARE JUSTIFIED BY PROPOSITION 13'S RATIONAL AND VALID POLICY OBJECTIVES.

As noted above, this Court in both *Allied Stores* and *Allegheny Pittsburgh* held that a state has the power to impose and collect

³ In 1978, the population of California was 22,836,000 and by 1990, the population had grown to 29,976,000. *California Statistical Abstract*, 10 (1991).

taxes and that it *may* tax property at different rates. Although Proposition 13 does *not* create any suspect classifications because it treats all similarly situated people alike, it does create different classes for purposes of tax collection for different people in different situations which are *unrelated to length of residency*. However, this Court consistently holds that states may create different classes for tax collecting purposes as long as the classifications are neither “capricious nor arbitrary and rest under some reasonable consideration of difference and policy.” *Allegheny Pittsburgh*, 488 U.S. at 344, 359 (citing *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 573, (1910)).⁴ To find Proposition 13 unconstitutional, petitioner must show that any classification method under Proposition 13 is both arbitrary and capricious and that there are no underlying policy reasons for the transition from the former current-value tax system to an acquisition value method of taxation.⁵

In 1991, this Court ruled on two cases regarding a state’s ability to create classifications. In *Leathers v. Medlock*, 111 S. Ct. 1438 (1991), this Court upheld Arkansas’ ability to impose a sales tax on cable television, but not on printed matter. The Court wrote: “[i]nherent in the power to tax is the power to discriminate in

⁴ Petitioner lists numerous “unfair” elements of the Proposition 13 system and she rests her “constitutional” challenges on these charges. The most prominent charge is the supposed unfairness between those individuals who have owned their property since 1978 and more recent purchasers. Petitioner asserts that certain subsequent amendments to Proposition 13 have created a “caste,” individuals who have owned their homes since 1978 and will be able to take full advantage of Proposition 13. Petitioner’s Brief at 21. Although there is still a substantial number of these individuals, petitioner’s own study demonstrates that this number is declining rapidly and will soon represent an insignificant portion of the property tax-paying public. Petitioner’s Brief at 19. Joint Appendix at 46.

⁵ Such classification is no different than that which may occur under sales taxation. The California Supreme Court observed in *Amador Valley*: “the fact that two taxpayers may pay different taxes on substantially identical property is not wholly novel to our general taxation scheme. For example, the computation of a sales tax on two identical items of property may vary substantially, depending upon the exact sales price and availability of a discount.” *Amador Valley*, 22 Cal. 3d at 235-36.

taxation. ‘Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. *Id.* at 506.’” (citing *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 547 (1983)).

In *Gregory v. Ashcroft*, 111 S. Ct. 2395 (1991), the Court recognized the constitutional presumption which favors the state in its ability to make classifications. In *Gregory*, this Court upheld the Missouri constitution’s age qualification for its policy-making officials, stating that a petitioner has the burden to disprove the validity of the underlying policy reasons for a particular classification. The Court held that “[a] state ‘does not violate the equal protection clause merely because the classification made by its laws are imperfect.’ [citations] In an equal protection case of this type . . . those challenging the judgment [of the people] must convince the court that the . . . facts on which the classification is apparently based could not reasonably be conceived to be true by the decision-maker.” *Id.* at 2407-08 (citing *Vance v. Bradley*, 440 U.S. 93, 111 (1979)).

This presumption, combined with the historical deference shown toward state tax regimes in general, creates a high standard for petitioner to meet. As will be demonstrated below, petitioner fails to show that Proposition 13 classifications are arbitrary or capricious or that the underlying policy reasons for Proposition 13 are unreasonable or invalid.

1. Proposition 13 eliminates any hint of arbitrary or capricious actions by the State.

Under Proposition 13’s acquisition value tax system, property purchasers are now in a position to more accurately determine their property tax assessment in advance because the purchase price instead of an assessor’s disparate calculations determines the tax basis. As mentioned earlier, Proposition 13 treats property as a capital asset with a tax basis equal to the purchase price, similar to the basis rules for property outlined in the IRC.

Pursuant to Proposition 13, reassessment for tax purposes occurs only at sale or realization. Similar to the situations in *Allied Stores* and *Brown-Forman*, the state sets a standard and an individual decides whether to participate and at what price. Under the former current-value tax system, the state taxes an individual on the

unrealized gain of the property as perceived by the assessor whose calculations may very well be both arbitrary and capricious. Under Proposition 13, such risks are eliminated because the taxpayer and the free market control both the timing of realization and amount of tax assessment by means of a sales price.

This Court has examined the constitutionality of taxation on unrealized gains. In *Eisner v. Macomber*, 252 U.S. 189 (1920), the Court held a tax on unrealized gains unconstitutional. While this Court in *Commissioner v. Glenshaw Glass*, 349 U.S. 426 (1955) distinguished *Macomber*, the Court still held that the IRC formula, outlined in 28 U.S.C. §1001 that taxes on realization of the asset, was a proper administrative rule, if not a constitutional requirement. Marvin A. Chirelstein, *Federal Income Taxation* ¶ 5.01 (4th ed. 1985).

Moreover, taxation on realization is a more equitable tax treatment for property. Income tax, sales tax, user tax or any other commonly used form of taxation allows an individual a degree of control over his or her tax burden. These taxes divert money to a government entity by providing the state with a portion of the money an individual will receive or requires an individual to pay for a particular service. Such tax is called a "cash-flow" tax. A property tax, on the other hand, is traditionally a "portfolio" tax — it taxes people according to assets they have in their "portfolio" which they may or may not have realized.⁶ Proposition 13 attempts to shift property tax from a portfolio tax to a cash-flow tax.

The unique characteristics of property justify the tax system envisioned by Proposition 13. Unlike income, property often does not generate cash-flow. Land and building values are locked into the physical or aesthetic nature of the edifice or soil. A property tax based on perceived current-value and a ready buyer with available

⁶ Economists have generally agreed that the one of the greatest problems affecting a tax on unrealized gain concerns liquidity. With paper gains, a person is put in the situation of borrowing against the asset or selling. Chirelstein, *supra*. In a tight credit market, the costs and difficulty of financing a tax burden will force people to sell their homes.

cash or financing makes assumptions that are often invalid.⁷ A taxpayer under such a current-value system is subject to arbitrary and sporadic tax increases where the taxpayer has no control and is thus potentially subject to the capricious demands of the state.

Moreover, the determination of tax assessments under a current-value system can be arbitrary. "The difficulty of making annual property appraisals may be the chief reason for [taxing at realization]; the absence of ready cash to pay the tax on property appreciation and the consequent 'forced liquidation' of assets to meet tax obligations is another." Chirelstein at *supra* p. 12; see also William A. Klein, Boris I. Bittker & Lawrence M. Stone, *Federal Income Taxation*, 302-03 (7th ed. 1987). Tax assessing is an inexact science in that a particular property may have a multitude of different values. Property may be valued according to its replacement value, rental value, historical value, current market value, selling price, buying price or aesthetic value. See 1 California State Board of Equalization, *Property Taxes Law Guide*, §§200 et. seq.; Kenneth A. Ehrman & Sean Flavin, *Taxing California Property* (3rd. ed. 1989) §§12.01 et. seq.

Finally, in California, the county assessor is an elected official who may lower the assessments of his or her political friends and raise the assessments of his or her political foes.⁸ Discrepancies in assessment techniques can create huge disparities in tax burdens that would be imposed on an unwitting taxpayer without warning or notice. Only under an acquisition value regime does the state have a

⁷ For example, unlike individual stocks in an investment portfolio, it is difficult to subdivide and sell a portion of a residential property for cash to pay a tax bill. Zoning laws may preclude it and a buyer may not be available for such a small portion of land.

⁸ County assessors have been accused of favoritism in the assessment of property. While nearly all assessors are honest, such accusations create public skepticism. A former Los Angeles County assessor prior to Proposition 13 encountered such accusations. See, Robert Rawitch, "Suit Seeks to Block Tax on Mystery Ship," L.A. Times, Aug. 19, 1975, pt. I at 3; "Watson Accused of Overvaluing Property in County," L.A. Times, Oct. 19, 1972, pt. II at 1. Doubts concerning the validity of property assessments are reinforced by the different methods of valuation.

guaranteed, more evenly-distributed assessment system that provides property owners some degree of certainty of future tax burdens.⁹

2. *Proposition 13's valid policy objectives justify its tax classifications.*

As noted above, this Court defers to states and their ability to impose taxes on its electorate. *Allegheny Pittsburgh*, 488 U.S. at 344 (citing *Allied Stores*, 358 U.S. at 526-27); see also *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). Differences in treatment between taxpayers do not violate the equal protection clause where such differences are rooted in valid state policies. *Kahn v. Shevin*, 416 U.S. 351, 355 (1974); *State Board of Tax Commissioners of the State of Indiana v. Jackson*, 283 U.S. 527, 537 (1931). Thus, even if this Court finds that Proposition 13 does create certain classifications, the underlying policy objectives and general deference to the states in tax matters justify such classification.

The policy objectives of Proposition 13 are not only valid, but Proposition 13 demonstrably produces a fairer and more efficient system of property tax. Prior to Proposition 13, local governments established a budget and then set the tax rate on all taxpayers. As a result, property taxes fluctuated on a yearly basis. Theoretically, some years the rate would increase and other years the rate would drop. Empirically, however, the amount of tax always increased. Local governments had no restrictions on their spending and could fund whatever projects they chose by raising property taxes. Government essentially had a blank check to set tax rates and increase property assessments. Proposition 13 took away this checkbook by fixing the amount of revenue available to local government.

In 1977, property taxes represented a much greater percentage of a local government's budget than today. See, *California Taxing and Spending*, Cal-Tax News, Feb. 15, 1991, at 3-6. Under the prior system, property owners paid for government services according to

⁹ Proposition 13 was adopted in 1978 and it has been interpreted by over 100 California court decisions. Today, it is still the subject of interpretation by the California Supreme Court. See e.g., *Pacific Southwest Realty Co. v. County of Los Angeles*, 91 Daily Journal D.A.R. 16018, (December 30, 1991).

the value of their property. But under Proposition 13, property taxes constitute a smaller percentage of total governmental revenues because other sources have been created to fill any gaps. These sources draw from the whole taxpaying population which creates a more progressive overall tax burden in California and distributes the cost of government services more evenly. In fact, an independent Rand Corporation study evaluated the impacts of the California and New Jersey property tax revolts. In both cases, the progressivity of the total state tax burden increased with the new property tax systems, especially in California. See Dennis De Tray & Judith Fernandez, *Distributional Impacts of the Property Tax Revolt*, 43 Nat'l Tax J. 435, 445 (1990). Today, taxes are imposed generally on those with the ability to pay, contrary to the pre-Proposition 13 system. Now that Californians have greater input into how their money is spent, property tax has become a fixed, predictable revenue source like sales or income tax, rather than a fluid revenue source which would fluctuate to fill any deficit.

Petitioner and supporting *amici* contend that local governments have been stifled as a result of the effective spending limitations imposed by Proposition 13. This is untrue. Local governments have successfully found alternate sources of revenues and the voters have provided additional revenues for desired services and projects. *Amici* Brief of the American Planning Association and the California Chapter of the American Planning Association ("Planners Brief") at 19; *Amici* Brief of the Building Industry Association of Southern California, Inc. and the National Association of Home Builders ("Builders Brief") at 4. California voters prefer this control. Since 1978, not one anti-Proposition 13 measure has qualified for the ballot in California despite the fact that these *amici* have access to the initiative process.

It is precisely this decision of the people to which petitioner and supporting *amici* object. Although new revenue sources have been created to meet revenue shortfalls resulting from Proposition 13, petitioner and supporting *amici* simply do not favor these alternatives. *Amicus* Brief of the League of Women Voters of California ("League Brief") at 9-10; Builders Brief at 5; Planners Brief at 23; and *Amicus* Brief of the International Association of Assessing Officers ("Assessors Brief") at 12-13. Petitioner and supporting *amici* in effect argue that they know what is good for California, not the voters. Therefore, petitioner and supporting *amici* are hoping to

deceive this Court with policy arguments masked as "constitutional" challenges to achieve in the courtroom what they have been denied at the ballot box.¹⁰ See, e.g., Assessors Brief at 18.

The League Brief is especially egregious because it constitutes a frontal attack on direct democracy. The League of Women Voters of California (the "League") acknowledges that it is asking this Court to destroy our federal system of government. *Id.* at 4. The League argues that since Proposition 13 was an initiative, the rawest and most direct form of democracy, heightened scrutiny must be exhibited by this Court. League Brief at 13. The League and other supporting *amici* state that the California voter is not sophisticated enough to understand the ballot measures. League Brief at 13, fn.10. They assert that the voters are unaccountable and unenlightened, unlike supporting *amici* which have "pure" motives. Builders Brief at 13 (fees complicate and increase the costs of their industry); Planners Brief at 10-11 (any reduction in revenue or the size of government would reduce the need for their services); and Assessor Brief at 18-20 (which recommends annual reassessment programs). Not only is this insulting to the California voter, but in a democracy, it is precisely initiatives like Proposition 13 which should be given greater deference because they represent the clear choice of the voters in a matter which is clearly of a legislative nature.

A weak link in our democracy has been the politicians' extravagance with public funds, in combination with their special ability to avoid public accountability. Individually, all government spending programs appear plausible; someone will always benefit. But collectively, unfettered spending grows, creating a national debt, huge taxes and public resentment. Twice in American history has this phenomenon prompted drastic and decisive outbursts of citizen indignation. The first event was the Boston Tea Party and the second was Proposition 13. Moreover, Proposition 13 has been found constitutional at every state court level. It has existed for 13 years and no political force has been able to dent its approval. The effects of Proposition 13 are evident daily in the form of increased

¹⁰ "Supporting Nordlinger's appeal, the League of Women Voters of California said the high court should address [Proposition 13] because 'the political realities are such . . . that a political solution is not practical.'" Dori Meinert, "High court will rule on Prop. 13," S.D. Union, Oct. 8, 1991, Sec. A, 1.

fees and sales taxes. See generally, the supporting *amici* briefs. Nevertheless, Proposition 13 remains popular to the overwhelming majority of Californians. This Court must not be led astray by a vocal minority attempting to use the court system for personal and political gain.

IV. UNDER THE FEDERAL SYSTEM OF GOVERNMENT, CALIFORNIA HAS THE RIGHT TO ESTABLISH ITS OWN TAXATION SYSTEM

Federalism demands a balance between federal and state power. A dual sovereignty between the state and national governments exists today and numerous court decisions recognize this fundamental principle. In *Gregory*, this Court reaffirmed the importance of states and the constitutional requirement to protect their independence. The Court wrote that "the maintenance of [state] governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." *Gregory*, 111 S.Ct. at 2399 (quoting *Texas v. White*, 74 U.S. 700 (7 Wall. 1868) (quoting *Lane County v. Oregon*, 74 U.S. 71, 76 (7 Wall. 1868))).

The preservation of the states, through limited government, is rooted in the text of the Constitution itself. The tenth amendment to the Constitution provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. Such a provision insures a form of decentralized government that can respond more quickly and appropriately to the ever-changing needs of society. States have been universally recognized as "laboratories" for social policy and many of the national programs enacted by Washington first received their genesis in a state capitol. *Gregory*, 111 S.Ct. at 2399.

But perhaps the most significant benefit of federalism lies in its check on the abuses of power in general. "The 'constitutionally mandated balance of power' between the States and Federal Government was adopted by the Framers to ensure the protection of our 'fundamental liberties.'" *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242, (1986) (quoting *Garcia v. San Antonio Metropolitan*

Transit Authority, 469 U.S. 528, 572 (1985) (Powell, J., dissenting). This balance between our state and national governments insures that no one entity accumulates enough power to threaten our democracy.

A. FEDERAL JUDICIAL INTERFERENCE WITH PROPOSITION 13 IMPROPERLY VIOLATES THE CONSTITUTIONAL PRINCIPLE OF FEDERALISM.

A precarious balance exists between the states and the national government, in large measure, due to the national government's decided advantage under the supremacy clause of the Constitution and the wide powers obtained through this Court's interpretation of the commerce clause. See U.S. Const. Art. VI and Art. I, §8, cl.3. Yet, as long as each branch of the national government acts within its powers, the federal system will remain intact. This was the Court's reasoning in *Gregory* when it held that a Congressional statute did not supersede the Missouri state constitution regarding the qualifications of its elected officials. *Gregory*, 111 S.Ct. at 2408. In *Gregory*, this Court held that the independence of states is tied to their ability to create the qualifications for their officeholders. 111 S.Ct. at 2400. This Court held that it was incumbent on Congress that, if it desired to override a provision of a state constitution that was so closely identified with a State's existence, it must explicitly express its intentions to do so. *Gregory*, 111 S.Ct. at 2401 (citing *Atascadero*, 473 U.S. at 242).

This Court has similarly held that the taxing authority is integral to a State's governing ability and function in our federal system. Of all such areas, state taxation is perhaps the most important. *Taub v. Kentucky*, 842 F.2d 912, 919 (6th Cir. 1988) (quoting *Dawson v. Childs*, 665 F.2d 705, 709 (5th Cir. 1982)). "[This] Court early recognized the need for judicial restraint in matters involving a state's fiscal affairs. *First National Bank v. Board of County Commissioners*, 264 U.S. 450 (1924)." *Id.* Proposition 13 was an amendment to the California constitution. It was adopted by a voter referendum which is the most direct form of democracy. As long as Proposition 13 does not clearly violate the U.S. Constitution, this Court should continue to show its traditional deference toward state tax questions in order to maintain the balance of our federal system.

B. PETITIONER'S POSITION ON PROPOSITION 13 RENDERS STATE BOUNDARIES MEANINGLESS.

If the Court adopts petitioner's reasoning, this Court would be bound to similarly abolish any differences in tax rates in other states. If Proposition 13 is found to violate the equal protection clause or restrict travel into California, then any difference in state tax levels becomes a violation of the equal protection clause or a barrier to travel. If so, the instant case will be recognized as the Supreme Court decision that equalized income tax, sales tax, property tax or any other commonly used form of taxation between states. As stated above, such a decision is an open invitation to every aggrieved land owner to seek a remedy in federal court, and the federal judiciary will need to respond appropriately.

Without the ability to tax independently and free from federal interference, states as states no longer exist. The ability to tax is a defining characteristic of sovereignty. The federal government has traditionally deferred to the states on this matter. Petitioner's position would impede the political process of state government and state referendums. This is petitioner's underlying objective. Petitioner and supporting *amici* argue against Proposition 13 by presenting a multitude of political arguments as "constitutional" issues. It is the *amici* and petitioner who distrust of the California initiative process and have directed this court challenge. Without the voter initiative process, most of the "negative" results that *amici* and petitioner present would not have been implemented. Despite petitioner's and *amici*'s arguments, the voters have maintained and supported the policies to which petitioner and *amici* object. Any reduction in voter accountability strengthens the role of special interests and creates less responsive government. Proposition 13 was a political battle pitting homeowners and small property owners against big business and special interest groups. See, Clarence Y. H. Lo, *Small Property Versus Big Government Social Origins of the Property Tax Revolt*, 81-85, 87-88 (1990). Petitioner's *amici* fall into the category of special interests that opposed Proposition 13 in 1978. League Brief at 2.

A ruling against Proposition 13 by this Court would give a political powerful minority the victory that it has lost at every level — with the electorate in 1978, with the Legislature throughout the 1980s, and the California court system. This Court has been

willing to accept the ruling of the voters in other instances that have involved societal choices within a constitutional framework. This Court has deferred to electorate's choice once it has been demonstrated at the ballot box. See, e.g., *Gregg v. Georgia*, 428 U.S. 153, 179-84 (1976); *Miller v. California*, 413 U.S. 15, 24 (1973). In the instant case, petitioner and supporting *amici* claim that if the California voter really understood the impact of Proposition 13, they would repeal the measure. However, the voting results suggest the opposite. Despite clear evidence that the California voter was informed of all of the arguments raised by petitioner and supporting *amici*,¹¹ the California voters overwhelmingly adopted Proposition 13 and its subsequent amendments. Legislative efforts to lessen Proposition 13's impact have also met with failure. Cf. Assessors Brief at 15-17 (records legislative actions to further limit property taxes).

This Court is the final arbitrator of our nation's federal system. Through its careful and discreet judgment, this Court defends our decentralized government and prevents the abuse of power by any single governmental entity. Such a balance has been maintained only by abiding to the wishes of the American people within our constitutional framework. If the Court chooses to waver from its traditional position of granting state tax policies wide latitude, this Court will not only be the final review panel of every state's tax code, but will have upset the "only security against the abuse of power" — our federal system. *McCulloch*, 17 U.S. at 428.

¹¹ The independent analysis by the California Legislature Analyst which immediately preceded the text of Proposition 13 in the ballot pamphlet, stated that "[a]s a result [of Proposition 13's property tax reassessment method], two identical properties with the same market value could have different assessed values for tax purposes if one of them has been sold since March 1, 1975." California Ballot Pamphlet, June, 1978, Primary Election, 57. Furthermore, in the Rebuttal to Arguments in Favor of [Proposition 13], the opponents clearly stated that Proposition 13 "PLACES a disproportionate and unfair tax burden on anyone purchasing a home after July 1, 1978." *Id.* at 58 (emphasis in original). Opponents continued by stating that "[h]omeowners living in identical side-by-side houses will pay vastly different property tax bills." *Id.* at 59.

V. CONCLUSION

For the foregoing reasons, this Court should reject petitioner's claim and find Proposition 13 constitutional.

Dated: January 31, 1992

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IN THE SUPREME COURT OF THE UNITED STATES OCTOBER TERM, 1991

No. 90-1912

STEPHANIE NORDLINGER,
Petitioner,

v.

KENNETH HAHN, in his capacity as
Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,
Respondents.

On Writ of Certiorari To The Court of Appeal of the State of California

AMICI CURIAE BRIEF OF THE WASHINGTON LEGAL
FOUNDATION; ALLIED EDUCATIONAL FOUNDATION;
CALIFORNIA STATE SENATORS KENNETH L. MADDY,
BILL LEONARD, NEWTON R. RUSSELL, EDWARD R.
ROYCE, DON ROGERS, JOHN R. LEWIS, AND
ED DAVIS; AND CALIFORNIA ASSEMBLY MEMBERS
JAMES L. BRULTE, GILBERT W. FERGUSON, PHILLIP WYMAN,
PAT NOLAN, DORIS ALLEN, TRICE HARVEY, BILL BAKER,
DAVID KNOWLES, CAROL BENTLEY, PAUL A. WOODRUFF,
ANDREA SEASTRAND, CHARLES W. QUACKENBUSH,
RICHARD L. MOUNTJOY, TOM MAYS, TRICIA HUNTER,
MICKEY CONROY, AND TOM McCLINTOCK
IN SUPPORT OF RESPONDENTS

INTERESTS OF THE AMICI CURIAE

The Washington Legal Foundation (WLF) is a national nonprofit public interest law and policy center with more than 120,000 members and supporters nationwide. WLF

engages in litigation and administrative proceedings affecting the broad public interest. WLF is particularly interested in litigation involving the growth of government and excessive taxation. In addition, WLF has participated in cases which involve attempts to impinge upon traditional powers of state and local governments. See *Spallone v. U. S.*, 110 S.Ct. 625 (1990); *Gregory v. Ashcroft*, 111 S.Ct. 2395 (1991).

The Allied Educational Foundation (AEF) is a non-profit, charitable and educational foundation based in Englewood, New Jersey. Founded in 1964, AEF is dedicated to promoting education in diverse areas of study such as law and public policy and has appeared as *amicus* before this Court on a number of occasions.

Senator Maddy, *et al.*, are members of the legislature of the State of California and desire to participate in this case in order to protect their state's interest under the Constitution in fashioning tax policy without undue interference from the federal judiciary and in order to preserve Article XIII A of the California Constitution, which has played an important role in placing limits on taxes.

Amici believe that the national and state governments have important roles to play in our federal system of government. WLF believes that Article XIII A (popularly known as "Proposition 13") of the California Constitution serves an important state interest by limiting the growth of taxes in California and protecting homeowners from being taxed out of their homes, while at the same time permitting local governments to continue to collect funds to provide for governmental services. Article XIII A passes constitutional scrutiny under this Court's traditional rational basis test, thereby permitting California the leeway to fashion tax policy without undue interference from the federal judiciary.

Because of the unique perspective of WLF, AEF, and the *amici* members of the California legislature, this brief will bring relevant matter to the attention of the Court that

will not be brought to the attention of the Court by other parties.

This brief is submitted with the written consent of both parties pursuant to Rule 37.3.

STATEMENT OF THE CASE

In the interests of judicial economy, *amici* adopt the Statement of the Case as set forth in Respondents' brief.

SUMMARY OF THE ARGUMENT

In 1978 the people of California were confronted with rising taxes with no end in sight. Rising home values often outstripped inflation, and California homeowners found that skyrocketing tax assessments and the resulting property tax threatened to tax some people out of their homes. In an attempt to stop the rise in taxes, California voters enacted by initiative Article XIII A (popularly known as Proposition 13).

Article XIII A of the California Constitution is a comprehensive scheme to limit most state and local tax increases. Section 2 of Article XIII A limits assessment increases to the lesser of 2% or the increase in the consumer price index. However, when property is sold it is reassessed, and the 2% or consumer price index increase limit is then based upon the value of the home at the time of the purchase. This type of assessment is known as an acquisition value assessment.

Petitioner argues that the use of acquisition value assessments treats new home owners in an inequitable fashion since such new home owners are likely to pay higher taxes than similarly situated neighbors whose assessments are based upon the value of their homes in earlier years. Petitioner claims that this Court's decision in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989), mandates that Article XIII A be ruled unconstitutional.

Petitioner further argues that the State of California lacks any rational basis for using the acquisition value assessment system and hence infringes upon the rights guaranteed by the Equal Protection Clause of the United States Constitution. Finally, Petitioner argues that Article XIII A, Section 2 impacts upon the right to travel and hence the Court should subject Section 2 to heightened scrutiny.

Petitioner's argument is without merit. First, *Allegheny* is distinguishable from the case at bar. *Allegheny* involved the aberrational actions of a local government official that were contrary to state law. Article XIII A is a state policy formulated for reasonable policy purposes.

Article XIII A, Section 2 may not be the perfect tax assessment system, but it can withstand constitutional scrutiny. All tax systems are in some fashion inequitable or unfair. The issue before this Court is not, however, whether Article XIII A is fair but whether it is constitutional. This Court has traditionally applied a rational basis test in evaluating challenges to state taxes and has given the states wide leeway in devising tax codes. Article XIII A, Section 2 promotes a number of state policies in a reasonable manner.

First, the acquisition value assessment system is arguably a more fair and reasonable system of assessments than regular reassessments based upon market conditions. Unless a home owner sells a home, the home owner will not receive any additional cash income as a result of the increase in the home's value; any increase is merely a "paper" gain. Being taxed upon a "paper" gain is not fair.

In addition, the acquisition value system treats all taxpayers equally and provides taxpayers with predictability in determining potential future property taxes. That predictability allows taxpayers, including the Petitioner, to make rational planning decisions concerning

their ability to afford housing. Predictability is a reasonable state interest served by Article XIII A.

Finally, Section 2 does not stand in isolation. Article XIII A is part of a comprehensive scheme to limit taxes while still permitting local governments to collect revenue. Such a tax limitation is a reasonable state policy which justifies the classifications created by Section 2. Section 2, by limiting property tax increases and by providing taxpayers with predictability, diminishes the possibility that homeowners will be taxed out of their homes.

Petitioner's argument that Article XIII A impacts upon the Constitutional right to travel is without merit. The right to travel may be impacted by residency requirements. However, Article XIII A contains no residency requirement. A new home buyer from Nebraska or Timbuktu is treated in precisely the same manner as a new home buyer who is a native resident of California.

Finally, Petitioner and her supporting *amici* all argue that Section 2 is unfair and inequitable. However, they do not agree as to what tax assessment system is fair and equitable. That is not surprising. Taxes are inherently inequitable, and the writing of tax laws requires considerations of many factors which this Court is not equipped to deal with. If Article XIII A is struck down, the federal courts will be flooded with challenges to nearly every state and local tax and this Court will find itself acting as a Ways and Means committee re-writing the tax codes of states, counties, school districts, and cities around the nation.

ARGUMENT

I. ARTICLE XIII A OF THE CALIFORNIA CONSTITUTION DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE U.S. CONSTITUTION BECAUSE IT IS NOT ARBITRARY AND SERVES A REASONABLE STATE PURPOSE.

A. Article XIII A of the California Constitution Is Not The Aberrational Policy of An Individual Assessor But The Policy Of The State Of California.

Petitioner challenges Article XIII A (popularly known as "Proposition 13") of the Constitution of the State of California, arguing that the method of tax assessment established under that article discriminates against Petitioner in violation of the Equal Protection Clause of the Constitution and the Constitutional right to interstate travel.¹ *Amici* will first address the equal protection argument and then deal with the right to travel argument.

In 1978 the California voters by initiative enacted Article XIII A of the California Constitution in an attempt to end the continual spiral of rising taxes.² Article XIII A is a comprehensive program to limit taxes and permit individuals some predictability in determining future tax assessments while at the same time providing revenue to local governments.

¹"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Constitution, Amend. XIV, Section 1.

²Even Petitioner concedes that "this is not to say that the pre-Proposition 13 system did not place a strain on some homeowners when rapid property appreciation outstripped inflation, causing taxes to outstrip inflation." Pet. Br. 34.

Petitioner challenges Section 2 of Article XIII A which limits assessments to "the full cash value . . . of real property as shown on the 1975-76 tax bill under 'full cash value,' or thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." This system is commonly known as an acquisition value system of assessments.

Section 2 of Article XIII A permits upward adjustments in the fair market value base used to determine assessments, so long as that increase does not exceed the lesser of 2% or the consumer price index or comparable data. In addition, Section 2 has been amended several times since the 1978 passage of Proposition 13. The amendments carve out certain exceptions to the acquisition value system of assessments which preserve the base-line value of property under a number of circumstances where new building or changes in ownership would otherwise change the acquisition value of the property. Some of the exceptions carved out include cases in which the property is inherited, equipped with solar power, or improved to withstand earthquakes.

Petitioner argues that *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 336 (1989), compels this Court to strike down Article XIII A as unconstitutional. *Allegheny* is factually distinguishable. In *Allegheny*, the tax assessor of Webster County assessed real property for tax purposes on the basis of its most recent purchase price and made only minor modifications in the assessed value of land which had not been recently sold. The assessment system of the county assessor was contrary to the requirement of the West Virginia constitution that "taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value . . ." W.Va. Const., Art. X §1.

No West Virginia statute or practice authorized "local officials to fashion their own substantive assessment policies independently of state statute." *Allegheny*, 488 U.S. at 345. Yet "the Webster County assessor has, apparently on her own initiative, applied the tax laws of West Virginia [contrary to state law] with the resulting disparity in assessed value of similar property." *Allegheny*, 488 U.S. at 345. Because the "aberrational conduct" of the assessor contrary to the requirements of the state constitution resulted in unequal assessments, this Court held the policy unreasonable and thus constitutionally deficient. This Court ruled that the policy of the tax assessor of Webster County violated the Equal Protection Clause of the United States Constitution.

Significantly, in finding the Webster County assessor's policies in violation of the Equal Protection Clause of the Constitution, this Court distinguished a similar assessment system "if it were the law of a State generally applied instead of the aberrational enforcement policy" of Webster County. Furthermore, this Court expressly reserved judgment on whether Proposition 13 could withstand constitutional scrutiny. 488 U.S. at 344-345 n. 4.

Petitioner argues that the policy of the Allegheny assessor and Article XIII A are similar. While the tax assessment system in *Allegheny* bears some surface similarity to the assessment system mandated by Article XIII A, they are very different. The distinguishing feature of the procedure struck down in *Allegheny* was that the tax assessment determinations were ad hoc, arbitrary, aberrational decisions of a single local government official carried out in contravention of state law.

In contrast, the assessment system mandated by Article XIII A is not the aberrant policy of an individual that is contrary to state law, but is the official policy of the state. In light of that distinction, *Allegheny* does not provide the answer to the question as to whether Article XIII A can withstand constitutional scrutiny. Rather, Article XIII A must be examined on its own merits.

B. Rational Basis Is The Proper Standard Of Review In Evaluating Whether Article XIII A Can Withstand Constitutional Scrutiny.

Article XIII A involves classifications of property for tax purposes. However, that does not mean that Article XIII A is unconstitutional. Classifications of property are clearly permissible "if the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy." *Brown-Foreman Co. v. Kentucky*, 217 U.S. 563, 573 (1910). Article XIII A is neither capricious nor arbitrary but is based upon reasonable considerations of public policy. Article XIII A provides certainty, predictability, and limitations on taxes. Furthermore, the system provides a stable source of revenue for government.

In evaluating Article XIII A, it is appropriate for this Court to show restraint in second-guessing the considerations of the State of California which led to the adoption of Article XIII A. This Court has a long history of permitting the states to formulate tax policies with a minimal amount of judicial interference where "no specific federal right, apart from equal protection, is imperilled." *Kahn v. Shevin*, 416 U.S. 352, 355 (1974), citing *Lenhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). This judicial deference permits the states "large leeway in making classification and drawing lines which in their judgment produce reasonable systems of taxation." *Id.* at 355. That is in part because "[q]uestions of federalism are always inherent in the process of determining whether a state's laws are to be accorded the traditional presumption of constitutionality." *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 44 (1973).

When examining equal protection challenges to state tax policies, the "rational basis" standard applies. As this Court has stated, "A century of Supreme Court adjudication under the Equal Protection Clause affirmatively supports the application of the traditional standard of view,

which only requires that the State's system be shown to bear some rational relationship to legitimate state purposes." *San Antonio*, 411 U.S. at 44. Furthermore, Petitioner cannot prevail if the question of rationality remains debateable. *Minnesota v. Clover Leaf Creamery*, 449 U.S. 456, 464 (1981). Petitioner must "negative every conceivable basis which might support it." *Maddden v. Kentucky*, 309 U.S. 83, 88 (1940).

When applying the rational basis standard, this Court has only rarely struck down state tax codes based on allegations that the codes infringe upon the equal protection guarantees of the United States Constitution. In contrast to the limited number of cases in which state taxes have been struck down, this Court has upheld numerous distinctions created by tax codes, including those distinguishing between individuals and corporations (*Lenhausen v. Lake Shore Auto Part Co.*, 410 U.S. 356, 365 (1973)); those based on the size of corporations (*Fox v. Standard Oil Company of New Jersey*, 294 U.S. 87, 100 (1935)); those distinguishing between utilities and other business units (*New York Rapid Transit Corp. v. New York*, 303 U.S. 573, 579 (1938)); those based upon the purposes for which warehoused goods are stored (*Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959)); those distinguishing between adulterators and non-adulterators of distilled spirits (*Brown-Forman Co. v. Kentucky*, 217 U.S. 563 (1910)); those distinguishing between widows and widowers (*Kahn v. Shevin*, 416 U.S. 351 (1974)); those based upon ownership by railroads (*Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362 (1940)); those distinguishing between vehicle use and weight (*Coyne v. Prouty*, 289 U.S. 704 (1933)); those based on differences in the resource being extracted (*Lake Superior Consol. Iron Mines v. Lord*, 271 U.S. 577 (1926)); those distinguishing between agricultural versus non-agricultural uses (*Clark v. Kansas City*, 176 U.S. 114 (1900)); and those based on leased versus non-leased property (*Illinois Central v. Minnesota*, 309 U.S. 157 (1940)).

This Court should judge Article XIII A by the same rational basis standard which this Court traditionally applied in granting the states broad leeway in creating classifications.

C. Article XIII A Serves A Number of Proper State Interests.

Standing alone, Section 2 of Article XIII A promotes a number of reasonable interests of the State of California. The acquisition value system "is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." *Allegheny* at 344-345 n.4. Paper gains in the value of a home do not translate into money with which to pay taxes, unless the owner sells or mortgages his property. Unlike commercial property, homeowners' property does not produce income.³ Unless the homeowner is fortunate enough to have an income that rises in the same proportion as the value of his home, rising taxes based upon paper gains can literally tax a homeowner out of the home.

In many ways the acquisition value system is more fair than the current-value system of assessments. The acquisition value system permits a potential home buyer to reasonably calculate future property taxes based upon the value of the home at the time of acquisition. The home buyer may then make a rational decision based upon his anticipated income and expenses as to whether he can afford the home. If, however, the assessments change with each fluctuation in the market, the buyer is unable to make such a rational decision and thus may find himself taxed out of his home. The advantage of the acquisition value system over the current-value system of assessments

³Different considerations may be involved in the case of business properties that generate revenue. See *R.H. Macy v. Contra Costa County*, No. 90-1603, dismissed, 60 U.S.L.W. 3005 (June 28, 1991). However, that issue is not before this Court.

was recognized by the Supreme Court of California, which found that the acquisition value system "may operate on a fairer basis than the current value approach," *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 235, 149 Cal.Rptr. 239, 251, 583 P.2d 1281, 1293 (1978) (emphasis added). Furthermore, even *amicus* International Association of Assessing Officers ("IAAO") writing in support of Petitioner, implicitly concede that "a pure 'acquisition value' system" would theoretically have a reasonable purpose. *Amicus IAAO Br.* 15.

When Article XIII A was adopted, the voters rolled back the base-line to 1974-75 levels for property owners who owned homes at that time. Petitioner argues that since the enactment of Article XIII A, the inequalities of the system have grown, with the 1978 homeowners constituting a privileged class of taxpayers who benefit from the higher taxes paid by later home purchasers such as Petitioner. To the extent that Article XIII A "grandfathers" the acquisition value of property values for homeowners, it gives a tax benefit based upon how early one purchased a home. However, that is not unconstitutional; "grandfather" clauses have been routinely upheld by the courts. *New Orleans v. Duke*, 427 U.S. 297, 305-06 (1976).

In this case, however, those who have owned their homes since the passage of Article XIII A are not even beneficiaries of a true "grandfather" provision. All post-Article XIII A home purchasers, including Petitioner, receive at least the same benefit that the earlier home owners received -- they will have their assessments based upon acquisition value. Potential homeowners all have the opportunity to purchase a home knowing that they can reasonably calculate future property taxes. If home prices rise in the future, all homeowners, including Petitioner, will be protected from being taxed out of their homes by Article XIII A's guarantee that the assessments on their homes will be based upon acquisition value. It is the homeowners who purchased their homes prior to 1974 who

have the strongest argument that their taxes are inequitable because Article XIII A "grandfathered" the assessment based on the value of their homes as of 1974 -- rather than on the basis of acquisition value, which may have been considerably less.⁴

The repeated refrain in Petitioner's brief and the briefs of *amici* supporting Petitioner is that the tax assessment procedure of Article XIII A is "unfair" and "inequitable." It may be true that Article XIII A is not entirely equitable and that Petitioner deserves some sympathy. That is because all taxes are by their very nature unfair and inequitable. What is equitable about a sales tax which might place a burden on those with the least income? What is equitable about a property tax when those without property do not have to directly pay the tax? What is equitable about income tax deductions for homeowners but not renters? In all likelihood, there is no such thing as a truly equitable tax. Every tax has some inherent inequity which "unfairly" places a disproportionate burden upon some class of taxpayers.

The problem with allowing courts to use equity or fairness as a criterion for reviewing a tax code's constitutionality is made manifest by comparing the complaints levelled against Article XIII A in this case and in the earlier challenge to its constitutionality, *Amador*. In that case, then-Chief Justice Rose Bird of the California Supreme Court complained in her dissent that there was no rationality to a system that would assess at acquisition

⁴In *Amador* the failure to roll back the base-line past 1975 to the original acquisition price of homes was discussed. However, the California Supreme Court correctly pointed out that the arbitrary cut-off was necessary to produce reasonable revenue and was justifiable for administrative reasons. 22 Cal.3d at 236, 149 Cal.Rptr. at 252, 583 P.2d at 1294. The pre-1975 home purchasers were the "victims" of discrimination, when *Amador* was decided; however, they are now, in Petitioner's view, part of the "privileged class." Perhaps after several years pass Petitioner will also realize that she is a beneficiary of the tax limits imposed by Article XIII A.

value a home that was inherited. Since *Amador*, the State of California has amended Article XIII A to exempt most such inheritances from re-valuation. Yet, in the case at bar, Petitioner argues that the exemption is evidence of the disparity of Article XIII A. Pet. Br. 40.

The exceptions to the acquisition value system that have been carved out of Article XIII A -- such as inheritance -- and about which Petitioner complains, were often enacted to make the system more equitable and fair. Some exceptions cure the earlier "defects" complained about by former Chief Justice Bird. Each of the exceptions -- whether to encourage solar energy or provide assistance to those over the age of 55 -- are based upon reasonable public policy considerations. Those exemptions do not render Article XIII A unconstitutional since this Court has recognized that "the latitude of discretion is notably wide in the classification of property for purposes of taxation and the granting of partial or total exemptions upon grounds of policy." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920).

Furthermore, Petitioner seems confused as to whether property tax discrimination amongst classes of individuals is fair or unfair, equitable or inequitable. Although decrying the effects of Article XIII A's assessment system upon herself and arguing that the exceptions are evidence of further discrimination, Petitioner suggests different preferred treatment for seniors, people on fixed incomes, and people with low incomes. Pet. Br. 34.

Similarly *amicus* League of Women Voters of California, arguing in support of Petitioner, suggests as part of an alternative tax assessment scheme a homestead exemption to protect low income homeowners. The various exemptions and classifications urged by Petitioner and *amicus* League of Women Voters of California may very well be appropriate. They certainly would not be unconstitutional since, like Article XIII A, the suggested classifications promote reasonable state policies. The only difference between the classifications supported by

Petitioner and the League and those created by Article XIII A and its exemptions is that Petitioner and the League favor some exemptions for policy reasons but oppose others. The policy preferences of Petitioner and the League are not a matter of constitutional law but a matter of politics. The ballot box, not the courts, is the appropriate forum for Petitioner and the League to advocate those preferences.

In short, the acquisition value system of assessments may not be perfect, but it may be more equitable than the current-value system of assessments. Whatever the relative merits of the two systems, it is beyond question that there is a reasonable basis for the State of California to adopt the acquisition value system. That system as implemented in California is not arbitrary but is founded upon reasonable policy distinctions. Furthermore, it is beyond question that the U.S. Constitution does *not* mandate that the states adopt a current-value system of acquisition.

D. Article XIII A Should Be Evaluated As A Comprehensive System To Limit Tax Increases While Still Permitting Local Governments To Collect Revenue.

The acquisition value system of assessments mandated by Article XIII A is, standing alone, a reasonable system. However, it might appear to some as unreasonable. Viewing the acquisition value system as part of the comprehensive scheme enacted in Article XIII A, however, makes clear that Section 2 of Article XIII A is a reasonable classification system designed to limit property and other taxes while at the same time permitting local governments to collect revenue.

Prior to the passage of Proposition 13, property tax assessments were skyrocketing, reaching a level such that some homeowners were being taxed out of their homes. The passage of Proposition 13 placed Article XIII A in the California Constitution and helped to limit the continual

tax increases that were plaguing California residents. At the same time Article XIII A permitted local governments to collect the revenue that the voters deemed adequate.

This Court should not look at the assessment provision of Article XIII A in isolation because "each of [the provisions of Article XIII A] is reasonably interrelated and interdependent, forming an interlocking 'package' deemed necessary by the initiative's framers to assure effective real property tax relief." *Amador Valley Joint Union High School District v. State Board of Equalization*, 149 Cal. Rptr. 239, 240, 22 Cal.3d 208, 231, 583 P.2d 1281, 1290 (1978).

In order to understand how Article XIII A operates as a comprehensive scheme to limit taxes, it is necessary to examine the other provisions of the Article in addition to Section 2. Section 1 limits the ad valorem tax on real property to one per cent of the full cash value of such property. Section 3 prohibits the state legislature from imposing new ad valorem taxes on real property, or sales or transaction taxes on the sales of real property. Furthermore, any increase in the tax rate or method of computing taxes can only be imposed by a vote of two-thirds of the legislature. Finally, Section 4 requires a two-thirds vote of the electorate in order to impose special taxes in cities, counties and special districts.

Together, as part of a comprehensive scheme, the provisions of Article XIII A do more than merely replace the current-value assessment system with an acquisition value system. Article XIII A serves the important function of placing limits on tax increases. That limitation benefits all taxpayers while at the same time guaranteeing a stable source of revenue to the government.

The legislative process is generally a matter of compromise and trade-offs. Tax legislation is no exception. The voters of California, in adopting Article XIII A, rejected the current-value system of assessments. The voters also adopted other mechanisms -- such as the

two-thirds vote requirements -- to prevent other tax increases. Allowing for re-assessments at the time of transfer of ownership was an integral part of Article XIII A because it permits the government a reasonable method of funding government services. That was part of the "compromise" of Article XIII A.

Before Petitioner was a homeowner, she benefited from the other tax limits imposed by Article XIII A. In addition, homeowners were paying property taxes for governmental services that she benefited from even though she was not paying property taxes.

Furthermore, while the acquisition value assessment system may have an immediate negative impact upon Petitioner, she is a beneficiary of other aspects of the of the acquisition system which might have a negative impact upon the classes of property owners whom she views as "privileged." For example, she benefits from the fact that pre-1975-1976 purchasers do not receive the benefit of having their property assessed at its actual acquisition assessment value. Furthermore, she benefits from the fact that Article XIII A does not permit all homeowners to carry over the basis of the acquisition value of their prior home to a new home.

Article XIII A could have been fashioned to provide greater protections to homeowners as suggested above. However, that would have made more difficult the collection of the revenue which the voters of California deemed appropriate. In addition, the voters could have enacted legislation to cap property taxes more stringently but permit other non-property taxes to rise. Such a solution would benefit property owners but burden non-owners. However by adopting Article XIII A the voters of California managed to fashion a compromise program that limits not just property taxes, but all taxes, while still supplying the government with funds. Looked at in its totality, the acquisition value assessment system makes sense as a policy that limits tax increases while at the same time permits the government to collect what the voters

believe to be adequate revenue. Certainly that is a reasonable purpose -- from the perspective of beleaguered taxpayers, it is perhaps the most reasonable and important purpose of Article XIII A.

E. This Court Should Not Use Heightened Scrutiny In Evaluating Article XIII A Because It Does Not Infringe Upon The Right To Travel.

It is clear that Article XIII A cannot be overturned unless the Court abandons the rational basis test and applies heightened scrutiny. -- *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia: The Supreme Court Gives "Welcome Stranger" Tax Assessments a Cold Reception*. 56 Brooklyn L. Rev. 1383 (1991). Hence, Petitioner also argues that Article XIII A discriminates against the constitutional right to travel.

However, Petitioner's right to travel argument has no merit. Petitioner's reliance upon *Zobel v. Williams*, 457 U.S. 55 (1982); *Hooper v. Bernailillo County Assessor*, 472 U.S. 612 (1985); and *Memorial Hospital v. Maricopa County*, 415 U.S. 250 (1974) is misplaced. In *Zobel*, this Court struck down Alaska's distribution of oil revenues based upon length of *residency* in the state. *Hooper* involved a property tax exemption for Vietnam Veterans if they were *residents* prior to May 8, 1976. *Memorial Hospital* involved a requirement that an individual *reside* in the county as a prerequisite for receiving free hospital care. The common feature of all three cases is that the constitutionally infirm classifications were based upon *residency*.

However, the provisions of Article XIII A apply equally to residents of the State of California and non-residents. A new home buyer who was born, raised, and never left the County of Los Angeles is in *exactly* the same legal status -- with respect to the assessment provision of Article XIII A -- as a new arrival from Nebraska or Timbuktu.

The tax "advantages" that a homeowner might have over a new home buyer are based upon ownership and not residency. To the extent that any advantage exists, a resident of Nebraska who own a home in California would have an advantage over a California resident who was a new home buyer.

Petitioner argues that by creating an incentive for home owners to retain their homes in order to preserve their property assessment baseline, Article XIII A is a barrier or threat of a barrier to travel. Whatever impact Article XIII A has as an incentive to retain one's home, the impact is *not* upon interstate travel.

Article XIII A by placing a limit on taxes, is likely to serve as an inducement -- rather than as a deterrent -- to would-be immigrants to California who would seek the long-term benefits offered by a tax assessment system that guaranteed-predictability in taxes and limits on taxes. Any alleged hardships suffered by newcomers to California are due in equal measure to the failure of the state from which they are moving to offer comparable tax advantages that California offers its homeowners. In summary, Article XIII A is no more a barrier to travel than good schools, good transportation, or other tax advantages that make one state more attractive than another.

II. THIS COURT SHOULD DEFER TO THE ELECTORATE OF CALIFORNIA RATHER THAN ACT AS A SUPER-LEGISLATURE TO REWRITE TAX CODES.

The reluctance of this Court to become involved in rewriting tax laws, except under the most extreme circumstances, serves an important function. The courts lack technical expertise as well as knowledge about the economic and other social impacts that any given tax policy will have. This Court has long recognized that "Justices of this Court lack both the expertise and the familiarity with local problems so necessary to the making of wise decisions with respect to the raising . . . of public revenue." *San*

Antonio Independent School District v. Rodriguez, 411 U.S. 1, 41 (1973).

Even Petitioner and some of the *amicus* briefs supporting Petitioner implicitly recognize the difficulties of having this Court rewrite tax codes. Petitioner properly states that it would be inappropriate for this Court to determine the appropriate relief if Petitioner is successful. Pet. Br. at 49.

The proper recourse for any real or perceived inequities created by Article XIII A is in the State of California -- not the federal judiciary. Petitioner argues that a majority of California property holders are losers in the Article XIII A assessment system. If that is true, the majority of California voters can repeal or modify Article XIII A. However, they have not done so, and perhaps that is because the majority of those who purchased property after 1978 realize that they are also beneficiaries of Article XIII A. From the date of the acquisition of their property they are beneficiaries of the system which prevents government from taxing property holders out of their homes.

If Petitioner prevails in this case, this Court will become a super-legislature for the fifty states constantly rewriting tax codes. *Amici* respectfully suggest that this Court is ill-prepared to fulfill that function and that its code is not likely to be any "fairer" or more equitable than tax codes devised by the legislature or the people through initiative process.

Fortunately, the test is not "equity" or "fairness" or "discrimination." This case does not present this Court with the question as to whether someone, somewhere can devise a more "equitable" system of taxation. The question before this Court is whether the system violates the Constitution, and the test is whether Article XIII A has some rational justification. If this Court rules that acquisition value taxation is unconstitutional, then this Court will be flooded by litigants challenging every tax in

the various states. *Amici* respectfully suggest that this Court retain its traditional standard and uphold Article XIII A.

CONCLUSION

For the reasons stated herein, the judgement of the court below should be affirmed.

Respectfully submitted,

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January 31, 1992

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OFFICE OF THE CLERK

In The
Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER, an individual,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor
for the County of Los Angeles,
and the COUNTY OF LOS ANGELES,

Respondents.

On Writ of Certiorari
to the Court of Appeal of California

AMICUS CURIAE BRIEF OF HOWARD JARVIS
TAXPAYERS ASSOCIATION, PAUL GANN'S
CITIZENS COMMITTEE, AND PACIFIC
LEGAL FOUNDATION IN SUPPORT OF
RESPONDENTS KENNETH HAHN, ASSESSOR
FOR THE COUNTY OF LOS ANGELES,
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No. 90-1912

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 RESPONDENTS KENNETH HAHN, ASSESSOR
 FOR THE COUNTY OF LOS ANGELES,
 AND THE COUNTY OF LOS ANGELES

IDENTITY AND INTERESTS OF AMICI

Pursuant to Supreme Court Rule 37, Howard Jarvis Taxpayers Association (HJTA), Paul Gann's Citizens Committee (PGCC), and Pacific Legal Foundation (PLF) respectfully submit this brief amicus curiae in support of respondents Kenneth Hahn and the County of Los Angeles. Written consent to the filing of this brief has

been granted by counsel for all parties. Copies of the letters of consent have been lodged with the clerk of this Court.

Howard Jarvis Taxpayers Association is a nonprofit, tax-exempt California corporation. It was organized in 1978 by the late Howard Jarvis, a coauthor of Proposition 13.¹ Under its former name of California Tax Reduction Movement, HJTA was organized for the express purpose of defending the tax reduction benefits of Article XIII A of the California Constitution. HJTA has over 250,000 members who actively support its ongoing tax reduction efforts.

Paul Gann's Citizens Committee is an incorporated organization which seeks to advance the interests of taxpayers. It was founded by the family of the late Paul Gann who, along with Howard Jarvis, coauthored Article XIII A. It was created to continue the work of Paul Gann who sponsored several statewide ballot measures seeking to protect and expand Article XIII A.

Pacific Legal Foundation is a nonprofit, tax-exempt corporation which exists for the purpose of engaging in litigation regarding matters affecting individual freedoms as well as economic and property rights. Founded in 1973, PLF has grown to be the largest public interest law firm in the country that is dedicated to the protection of the free enterprise system and limited government intervention. PLF now has over 20,000 contributors and supporters, many of whom are California property owners

¹ Proposition 13 added Article XIII A to the California Constitution and will be referred to throughout as Article XIII A.

who will be directly and immediately affected by any alteration in Article XIII A. PLF maintains its principal office in Sacramento, California. Authorization for PLF to become involved in a case is given by a Board of Trustees which is comprised of attorneys and businesspersons throughout the country. The Board evaluates the merits of any contemplated legal action and authorizes PLF participation only when the Board perceives broad public support for its position.

PLF's public policy perspective and litigation experience in the areas of limited government intervention in general and, in the defense of Article XIII A in specific, will help provide this Court with additional argument in resolving the important questions of law herein presented. In fact, PLF is thoroughly familiar with the issues presented in this litigation, having participated as amicus along with HJTA and PGCC in this case before the California Court of Appeal in the proceedings below.

Amici also filed a brief amicus curiae in *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*, 488 U.S. 336 (1989), the case upon which petitioner's claim is founded, seeking to ensure that any decision in that case did not materially affect the validity of Article XIII A. In *Allegheny Pittsburgh*, this Court expressly stated that its decision did not address the validity of Article XIII A. *Id.* at 344 n.4. Nevertheless, in the wake of *Allegheny Pittsburgh*, three separate actions were filed in California courts seeking invalidation of Article XIII A based on that decision.

OPINION BELOW

The opinion of the California Court of Appeal is reported at *Nordlinger v. Lynch*, 225 Cal. App. 3d 1259 (1990).

STATEMENT OF THE CASE

Petitioner filed this action in the Los Angeles County Superior Court on September 18, 1989, against the County of Los Angeles and the county assessor (then John J. Lynch). The trial court sustained respondents' demurrer without leave to amend and judgment was entered against petitioner. The judgment was upheld by the California Court of Appeal for the Second Appellate District in a published decision. Petitioner's Petition for Review to the California Supreme Court was denied on February 28, 1991.

STATEMENT OF FACTS

Petitioner is a resident of the City of Los Angeles who purchased her home in 1988 for \$170,000. Upon purchase, her house was reassessed to its acquisition value as allowed by Article XIII A. Under the terms of Article XIII A, petitioner's maximum annual property tax will be 1% of the property's acquisition value.² In addition, future increases in the taxable value of petitioner's

² The 1% may be exceeded only for voter-approved indebtedness. Cal. Const. Art. XIII A, § 1(b).

property will be limited to 2% per annum. There is no dispute that petitioner's tax liability is based on the price she voluntarily paid for her home or that she was fully aware of the tax consequences of her purchase.

SUMMARY OF ARGUMENT

Article XIII A of the California Constitution was enacted to advance the specific policies of tax limitation, prevention of taxation on paper gains in the value of property, certainty in future property tax liability, and provision of a stable revenue source for local governments. More than 12 years of experience have demonstrated that Article XIII A has indeed advanced its intended policies.

Because Article XIII A advances legitimate policies, it does not violate the Equal Protection Clause of the United States Constitution. Decisions from this Court firmly establish that states have broad discretion in fashioning tax laws as long as such laws are not palpably arbitrary and advance legitimate policies.

In point of fact, so important are the policies behind Article XIII A, and so clear is the relationship between Article XIII A's various provisions and the furtherance of those policies, amici will demonstrate that Article XIII A meets the burden of any "intermediate" level of scrutiny which this Court may wish to employ.

ARGUMENT

This suit challenges California's constitutionally mandated ad valorem "acquisition value" property taxation system. A ruling by this Court that property tax systems based on acquisition value violate the constitutional guarantees of equal protection would not only upset the specific policy choice of this state's voters, but would also bring chaos to California's entire property tax system.³ While petitioner and her supportive amici are overflowing with declarations and conclusions regarding "discrepancies" and "inequities," amici herein file this brief in order to demonstrate how Article XIII A is able to withstand genuine analysis of its methods and policies and to urge this Court to uphold the constitutionality of this landmark initiative.

I

THE DELIBERATE POLICY CHOICES REFLECTED BY ARTICLE XIII A FAR EXCEED THE MINIMUM EQUAL PROTECTION REQUIREMENT OF "RATIONAL BASIS"

For petitioner to prevail, she must demonstrate that there exists no rational basis for Article XIII A's method of taxing property. Since this is an impossible showing as a matter of law, the decision of the California Court of Appeal should be affirmed. Amici will demonstrate that not only does Article XIII A have a rational basis, its

³ See generally Brief of Amicus Curiae California Assessors' Association (describing the impact of invalidating Article XIII A on members of the association as "comparable to rebuilding an engine while it is running") at 2.

provisions have worked precisely as intended to further the legitimate goals of tax limitation and revenue stability that voters in 1978 considered important enough to protect by constitutional amendment. It is not amici's intention to overstate their case, however, the clear relationship between Article XIII A's various provisions and the important policies they purport to advance demonstrates that Article XIII A more than surpasses the minimum equal protection requirement of "rational basis."

A. Article XIII A Advances the Policies of Tax Limitation, Tax Certainty, Limitation of Taxation on Paper Gains in the Value of Property, and Stable Revenue Sources

Simply stated, Article XIII A uses acquisition value, not current market value, as a basis of taxing property. The acquisition value system treats all taxpayers exactly alike. Their taxes are based on what they were willing to pay for their homes. In a real estate market with rapidly increasing values, Article XIII A generally favors those who have owned their property for a longer period of time. From this, petitioner argues that Article XIII A constitutes an ipso facto violation of equal protection. Brief for petitioner at 18.

This argument is little more than a conclusion, devoid of any equal protection analysis. Article XIII A conforms to the Equal Protection Clause for the simple reason that it is supported by very specific policies which are furthered by its operation. The existence of those policies—policies which were articulated prior to Article

XIIIA's enactment—distinguishes this case from the situation found unconstitutional in *Allegheny Pittsburgh*.

Article XIII A is the only property tax system in the country which protects property owners from being taxed on the paper gains in the value of their property and which provides certainty in future property tax liability, while at the same time providing ever-increasing property tax revenues to local governments. This did not happen by accident. Article XIII A was well thought out and continues to work today precisely as the drafters—and voters—intended back in 1978.

Article XIII A is not made up of disparate, unrelated provisions. Rather, it "consists of four major elements, a real property tax rate limitation (§ 1), a real property assessment limitation (§ 2), a restriction on state taxes (§ 3), and a restriction on local taxes (§ 4)." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 231 (1978) (emphasis in original). Each of these provisions is "interrelated and interdependent, forming an interlocking 'package' . . . to assure effective real property tax relief." *Id.* Petitioner's suggestion that Article XIII A can be partially dismantled and still remain effective (brief for petitioner at 2, Footnote 1) ignores the fact that Article XIII A's provisions are interrelated to accomplish its intended goals. To remove any one of Article XIII A's provisions would seriously erode the protections it was designed to provide.

Article XIII A provides substantial property tax protection for Californians in two ways. First, it establishes a maximum 1% rate of tax on "full cash value." Cal. Const.

Art. XIII A, § 1(a). Under this provision, the highest property tax which can be levied initially on a house with a purchase price of \$100,000, exclusive of voter approved indebtedness, is \$1,000. Second, and more importantly for the purposes of this lawsuit, Article XIII A defines the term "full cash value" as that value which is designated on the 1975-76 tax roll, with reassessments to reflect the new acquisition value when the property changes ownership, with annual increases limited to no more than 2% of the taxable value. Cal. Const. Art. XIII A, § 2. For example, even if a \$100,000 house increases in market value by 10% in one year to \$110,000, its *taxable value* for the following year cannot exceed \$102,000. The purposes of Section 2 are clear. It prevents property owners from being taxed on the mere paper gains in the value of their property and provides certainty in property tax liability.

The reason for allowing reassessment upon change of ownership should be obvious. If all parcels of privately owned property were taxed at 1% of the "full cash value" (starting with the 1975-76 tax year), limited to only 2% increases annually and without reassessment upon change of ownership, the total amount of property tax revenues coming into local governments in California would continually decrease in terms of real dollars. This is because inflation has significantly outpaced the modest Article XIII A growth factor since its adoption. Tax Foundation, *Facts and Figures on Government Finance* at 47 (1990 ed.).

It should not be surprising, therefore, that because of the reassessment provision and the rapid increase in real estate values, the increases in property tax revenues

coming into local governments have *exceeded* inflation.⁴ Thus, the property tax relief provisions of Article XIII A are only half the equation. The reassessment upon change of ownership provision is an integral part of Article XIII A's operation which advances the policy of providing a stable revenue source for local governments. This policy was expressly recognized in a recent California court decision. *R. H. Macy & Co. v. Contra Costa County*, 226 Cal. App. 3d 352, 360 n.2 (1990), *cert. granted*, ___ U.S. ___, 114 L. Ed. 2d 708, *cert. dismissed*, ___ U.S. ___, 115 L. Ed. 2d 1045 (1991).

Article XIII A is a departure from the traditional "current market value" systems of property taxation. It was meant to be. "Current market value" systems do not reflect the careful balance between the needs of property owners and the needs of government. A system which is equal in its onerous and unpredictable treatment of property owners cannot be considered any more "rational" an alternative than the one of which the petitioner complains.

B. Article XIII A Does Not Violate the Equal Protection Clause of the United States Constitution

Petitioner contends that a state which does not tax property based on current market value violates the

⁴ For example, in tax years 1987-88 to 1988-89 the growth for county assessed property (including the homeowners' exemption but not including other exemptions) increased 9.7% to \$1.2 trillion. *State Board of Equalization 1988-89 Annual Report* at 23.

Equal Protection Clause of the United States Constitution. This contention is without merit.

1. States Have Broad Discretion to Advance the Policies of Their Choice in the Taxation of Property

A state's disparate treatment of taxpayers does not violate the principle of equal protection as long as the classification is founded on a legitimate state policy which is advanced by the classification. *Kahn v. Shevin*, 416 U.S. 351, 355 (1974). In *Kahn*, this Court addressed the constitutionality of a Florida property tax exemption for widows only. A widower challenged this distinction on equal protection grounds. *Id.* at 352. This Court first observed that

"[a] state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. . . . This principle has weathered nearly a century of Supreme Court adjudication." *Id.* at 355 (brackets in original; citations omitted; footnote omitted).

This Court then concluded that the different treatment of widows and widowers " 'rest[ed] upon some ground of difference having a fair and substantial relation to the object of legislation.' " *Id.* at 355 (citations omitted).

This Court's deference to the states on matters of tax policy can be traced back at least as far as *Bell's Gap Railroad Co. v. Commonwealth of Pennsylvania*, 134 U.S. 232

(1890). There the Court concluded that "the XIVth Amendment was not intended to compel the States to adopt an iron rule of equal taxation." *Id.* at 237. The states may adopt distinctions between parcels of property of similar value, "so long as [such laws] proceed within reasonable limits and general usage, [and] are within the discretion of the State Legislature, or the people of the State in framing their Constitution." *Id.* at 237. *Bell's Gap Railroad Company* is persuasive because there, as here, the plaintiff contended that deviation from current market value violated the Equal Protection Clause.⁵

Since *Bell's Gap*, this Court has repeated the rule that "the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation." *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973); see, e.g., *Madden v. Commonwealth of Kentucky*, 309 U.S. 83, 88 (1940) ("in taxation, even more than in other fields, legislatures possess the greatest freedom in classification" (footnote omitted)); and *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526 (1959) ("the States have the attribute of sovereign

⁵ The exceptional deference shown to the states in tax matters does not necessarily extend to other kinds of economic legislation. Indeed, in the area of "takings" under the Fifth Amendment, higher standards of review are often applied. "[A] use restriction may constitute a 'taking' if not reasonably necessary to the effectuation of a substantial governmental purpose." *Nollan v. California Coastal Commission*, 483 U.S. 825, 834 (1987) (brackets in original; emphasis added) (citing *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 127 (1978)). Indeed, in *Nollan* this Court stated that its "opinions do not establish that these standards are the same as those applied to due process or equal protection." *Id.* at 834 n.3.

powers in devising their fiscal systems to ensure revenue and foster their local interest"). As recently noted by a tax scholar,

"the [United States Supreme] Court has been exceedingly deferential for the last half century. Prior to that, one finds a handful of cases, perhaps as few as four in the entire history of the Court, holding that an assessment practice violated rational basis equal protection. These rare decisions are poorly reasoned." Glennon, *Taxation and Equal Protection*, 58 Geo. Wash. L. Rev. 261, 263 (1990).

Based on the more recent cases from this Court (*Kahn*, *Allied Stores*, etc.), the California Supreme Court rejected an equal protection challenge to Article XIII A shortly after it was enacted. The basis for its ruling was that Proposition 13 was logically related to its intended goals. The court stated:

"[The] 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d at 235 (emphasis added).

2. Article XIII A's Acquisition Value System Based on Original Purchase Price Is Crucial to Its Legitimate Objectives

Prior to the enactment of Article XIII A, the operation of the traditional current market value system in

California simply was not working. California's exceptionally volatile real estate market had literally taxed many families out of their homes. The drafters of Article XIII A faced a choice between two extremes: (1) continue current market value assessment of all properties or (2) hold assessments of all properties at the market value as of some date certain (e.g., 1974-75).

Choice (1) does not provide either the certainty or the predictability the proponents of Article XIII A sought to achieve. Even with the maximum rate set at 1% of current market value, owners would still have the taxable value of their property determined by a wildly fluctuating real estate market. Inflation or unpredictable increases in the demand for property could drive up market values, with a corresponding increase in property taxes, independently of the owner's ability to pay those taxes. Continuing the current market value system would, however, ensure a revenue stream to the tax levying governments fully responsive to changing market values.

To be sure, choice (2) would have led to full predictability of future property taxes, however, it would also have provided a stream of property tax revenues guaranteed to decrease in terms of real dollars, potentially crippling local services.

The Article XIII A drafters rejected those two unacceptable extremes and inserted a provision that provided the stable revenues offered by the current market value system, as well as the certainty and predictability offered by holding the market value as of some date certain. Article XIII A would allow for the resetting of the assessed value of property at its market value whenever the property was sold. Thus, the new owner is able to

predict the future burden of property taxes regardless of the vicissitudes of the market, and local governments are assured of a system of generating revenue which continues to respond to increased property values and inflation.

The "cost" of this "acquisition value" system is the creation of the *appearance* of tax "inequity"—that is, owners of otherwise identical properties could be paying very different property taxes during any given year. This difference is offset by the effect that any difference in tax liability has on the value of the property when purchased. In considering the net benefits of ownership prior to purchasing, a prospective buyer will be willing to pay more for property subject to a low rate of property taxation and will demand a lower price if the property is subject to high property taxes. Thus, the economic burden created by property taxes is borne by both the buyer and the seller of real estate.

Further, under Article XIII A, the taxable value of every piece of property, regardless of when it was purchased, declines relative to the then current market value of the property as the years pass. All property owners are treated equally in the sense that 100% of a property's market value is used to calculate their initial tax liability and, as inflation increases the value of their property at a rate that exceeds the 2% rate provided by Article XIII A, their assessments grow smaller and smaller relative to the then current market value. Any tax "disadvantage" a new owner initially appears to have relative to his or her neighbor is greatly diluted as the difference between the new owner's assessed value and current market value increases.

The *appearance* of tax inequity in any given year arises, not because the tax burden differs depending upon date of purchase (it does not—all are taxed at 1% of acquisition value), but because the value of the separate properties are different at the time the tax is imposed. Basing property taxes upon the property's acquisition value is an essential element of, and is directly related to, Article XIII A's legitimate interest in eliminating tax liability on unrealized paper gains in the value of the property. To claim that such a practice is "irrational" (brief for petitioner at 12) is to ignore the legitimate state interests that are advanced by a challenged piece of legislation.

3. **Allegheny Pittsburgh Does Not Control This Case Because There Was No Deliberate Policy Choice Being Advanced by the "Aberrational Enforcement Policy" of a Single County Assessor**

In her contention that Article XIII A violates the federal Equal Protection Clause, petitioner relies heavily (if not exclusively) on this Court's decision in *Allegheny Pittsburgh*, 488 U.S. 336. Brief for petitioner at 14. Petitioner's reliance on this decision is misplaced for two fundamental reasons.

First, it is difficult to understand petitioner's singular reliance on a case which went out of its way to say it did not apply to the legal challenge which petitioner now brings. This Court in *Allegheny Pittsburgh* expressly stated:

"We need not and do not decide today whether the Webster County assessment method would stand on a different footing if it were the

law of a State; generally applied, instead of the aberrational enforcement policy it appears to be. The State of California has adopted a similar policy as Article XIII A of its Constitution, popularly known as 'Proposition 13.' Proposition 13 generally provides that property will be assessed at its 1975-1976 value, and reassessed only when transferred or constructed upon, or in a limited manner for inflation. Cal Const, Art XIII A, § 2 (limiting inflation adjustments to 2% per year). The system is grounded on the belief that taxes should be based on the original cost of property and should not tax unrealized paper gains in the value of the property." *Id.* at 344 n.4.

In the quote above, this Court simply said that it was not considering a case where the classification between taxpayers was advancing a state policy.

The second reason *Allegheny Pittsburgh* does not apply to Article XIII A is suggested by the distinction drawn by this Court itself in the same footnote. Specifically, this Court seemed to have little trouble distinguishing between "the law of a State, generally applied" and the "aberrational enforcement policy" of a single county assessor. The distinction is crucial. The very first sentence of this Court's decision in *Allegheny Pittsburgh* identifies West Virginia as having a current market value system of property taxation. *Id.* at 338. Thus, the assessment practice deemed unconstitutional in West Virginia not only bore no rational relationship to any legitimate state policy, it was in direct conflict with West Virginia's constitutionally mandated current market value system of property taxation. On the other hand, California has clearly articulated the policies it seeks to advance with its

property tax system and has deliberately chosen Article XIII A as the best way to effectuate those policies.⁶

Petitioner's reliance on *Allegheny Pittsburgh* highlights her failure to apply any measure of equal protection analysis to Article XIII A. It is the relationship between the articulated policies underlying a piece of legislation and the means employed to advance those policies that is the sine qua non of equal protection analysis. By merely claiming that Article XIII A's assessment policies are "irrational" (brief for petitioner at 12), petitioner completely fails to address the legitimate interests and purposes that are advanced by Article XIII A and reduces "rational basis" scrutiny to a "nontest" that provides absolutely no guidance in determining whether a law violates the Equal Protection Clause. Because California has chosen to pursue different tax policies than West Virginia, and has also chosen to implement those policies through different methods of property taxation, this Court's decision in *Allegheny Pittsburgh* does not provide an ounce of support for petitioner's argument.

⁶ The California Supreme Court itself in *Amador Valley* recognized that equal protection cases involving jurisdictions which require taxation on current market value are meaningless:

"[Such] cases . . . involve[] constitutional or statutory provisions which *mandated* the taxation of property on a *current value* basis. These cases do not purport to confine the states to a current value system under equal protection principles or to state an exception to the general rule accepted both by the United States Supreme Court and by us . . . that a tax classification or disparity of tax treatment will be sustained so long as it is founded upon some reasonable distinction or rational basis." *Id.* at 235 (emphasis in original).

4. The Deliberate Policy Choices Embodied in Article XIII A Are Evident Both from the Text of the California Constitution Itself and from the Ballot Pamphlet Accompanying Article XIII A

With Article XIII A, one need not conjure up a state of facts to justify its treatment of property owners. The policies are abundantly evident from the text of the constitution itself.

The very first sentence of Article XIII A reveals that tax limitation is its primary purpose: "The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property." Section 1(a). Likewise, protection against being taxed on paper increases in the value of property is clearly expressed in Section 3(b): "The full cash value base may reflect from year to year the inflationary rate not to exceed 2 percent." Finally, Article XIII A makes clear that property will be reassessed to the new acquisition value when "purchased, newly constructed, or a change in ownership has occurred," thus providing local governments with a stable source of revenue. Section 2(a). Article XIII A is straightforward and direct in its operation. A simple reading of its few provisions reveals its policies.

The ballot pamphlet accompanying Article XIII A further articulates these policies and removes all doubt as to whether the voters knew what they were getting.⁷ The voters were made *specifically* aware of the fact that similar properties could be taxed at differing amounts depending on the time of purchase. The independent analysis by the California Legislative Analyst which immediately precedes the text of the measure itself states that "[a]s a result [of the reassessment upon change of ownership provision], two identical properties with the same market value could have different assessed values for tax purposes if one of them has been sold since March 1, 1975." California Ballot Pamphlet, June, 1978, Primary Election at 57. Likewise, in the Rebuttal to Arguments in Favor of Article XIII A, the opponents unequivocally stated that Article XIII A "PLACES a disproportionate and unfair tax burden on anyone purchasing a home after July 1, 1978." *Id.* at 58. Finally, in the argument against Article XIII A, the opponents bluntly stated that "[h]omeowners living

⁷ The ballot pamphlet accompanying Proposition 13 may properly be analyzed to determine the measure's purposes and policies. In *City of Cathedral City v. County of Riverside*, 163 Cal. App. 3d 960, 964 n.4 (1985), the court noted that "[t]he California Supreme Court has relied heavily on the voters' pamphlet to determine the voters' intent in interpreting Proposition 13." See also *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 231; *City and County of San Francisco v. Farrell*, 32 Cal. 3d 47, 55-56 (1982). The limited federal law regarding reliance on ballot arguments is in accord. See, e.g., *Gutierrez v. Municipal Court of the Southeast Judicial District*, 838 F.2d 1031 (9th Cir. 1988). "Where a measure is enacted by the voters rather than the legislature, the ballot materials are recognized as important guides for determining legislative intent." *Id.* at 1044 n.17.

in identical side-by-side houses will pay vastly different property tax bills." *Id.* at 59.

Whether one looks at the text of Article XIII A or the ballot pamphlet, it is obvious that the citizens of California knew that the system they were voluntarily imposing on themselves would result in properties of similar current market values being taxed at different amounts. With full knowledge of this fact, the voters overwhelmingly adopted Article XIII A. They did so because any "inequities," to the extent they exist at all, are more than offset by the benefits of Article XIII A.

That voters knew what they were getting at the time Article XIII A was enacted is relevant in light of the petitioner's contention that the California Supreme Court's decision in *Amador*, upholding the constitutionality of Article XIII A, is somehow inapplicable because it was rendered "long before the disparities of the past thirteen years had developed." Brief for petitioner at 9 and 31, Footnote 18. This "if only they had known" argument fails completely for the simple reason that voters *did* know what the results of Article XIII A would be over time.

In terms of equal protection analysis, the policies underlying Article XIII A have been very well articulated and the voters who enacted it were aware of both the methods of achieving those policies as well as the future ramifications of those methods. Thus, a declaration that the system chosen by nearly 65%⁸ of the voters in California is "irrational" would require a level of scrutiny

⁸ According to the June 6, 1978, Statement of Votes, California State Archives, there were 4,280,689 (64.8%) votes for Proposition 13, and 2,326,167 (35.2%) votes against Proposition 13.

that totally eclipses anything ever considered to be within the "rational basis" standard previously applied to this type of legislation.

Petitioner also attempts to characterize Article XIII A as a method whereby "privileged 'castes'" are able to hold their property in order to retain artificially low property taxes "indefinitely into the future" at the expense of new property owners. Brief for petitioner at 21. This can likewise be seen as the fiction it is by considering the fact that California still has a faster property turnover rate than the national average.⁹ This means that the average home in existence at the time Article XIII A was enacted has already changed hands at least once.

The fact is, Article XIII A has *not* resulted in all or even most of the pre-Article XIII A property owners holding onto their property in order to saddle new owners with the costs of governmental services.

II

ARTICLE XIII A IS CONSTITUTIONAL UNDER A LEVEL OF SCRUTINY THAT REQUIRES MORE THAN A MERE RATIONAL RELATIONSHIP TO A CONCEIVABLE STATE INTEREST

Since *United States v. Carolene Products*, 304 U.S. 144 (1938), courts have required legislation affecting

⁹ In 1989, California's home sales market had a turnover rate of 8.4 years while the national market turned over at a rate of every 12 years. John Pfister, *Turnover Rate Worsened in 1990; Should Hold Steady for '91*, THE GUARANTOR, Sept./Oct. 1991, at 4-5.

individual liberties to be substantially related to a compelling state interest (*Loving v. Virginia*, 388 U.S. 1 (1967); *Shapiro v. Thompson*, 394 U.S. 618 (1969)), while requiring legislation affecting economic or property rights only to be rationally related to a conceivable state interest (*McGowan v. Maryland*, 366 U.S. 420 (1961); *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983); *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), but see *Nollan v. California Coastal Commission*, 483 U.S. 825 (requiring that a regulation which conditions the issuance of a building permit upon the granting of an easement to the public "substantially advance" the state interest)). *Id.* at 841.

While Article XIII A has thus far been subject only to the deferential "rational basis" standard of review (see *Nordlinger v. Lynch*, 225 Cal. App. 3d at 1272), petitioner has asked this Court to raise the level of scrutiny based on Article XIII A's alleged impact on the fundamental right to travel. Brief for petitioner at 39. Although amici contend that such a contention is meritless, should the Court determine that the *property* and *economic* interests involved herein are of a sufficiently fundamental nature so as to warrant a higher, "intermediate" level of scrutiny, amici will demonstrate how Article XIII A meets any such heightened level of scrutiny.

A. This Court Has Applied a Heightened Level of Scrutiny to Economic Legislation

As this Court's views of how economic legislation might impact rights which are to some degree "fundamental," have evolved, it has raised the level of scrutiny

applied to various classifications by requiring the interests served to be "important" (*Reed v. Reed*, 404 U.S. 71 (1971)), requiring that the legislation be "substantially related to the achievement" of its objectives (*Craig v. Boren*, 429 U.S. 190 (1976)), approaching the challenged law from the perspective of the disadvantaged group, as opposed to a neutral perspective, or that of the Legislature (*City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985)), or by refusing to allow post hoc justifications for a challenged law or ones that were not advanced during the trial below (see generally Gunther, *The Supreme Court, 1971 Term-Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for Newer Equal Protection*, 86 HARV. L. REV. 1 (1972)). One suggested method of raising scrutiny is to limit acceptable rationalizations for a rule to those which were actually in mind when the rule was adopted. See *Shweiker v. Wilson*, 450 U.S. 221 (1981) (Powell, J., dissenting, joined by Brennan, Marshall & Stevens, JJ.); *United States Railroad Retirement Board v. Fritz*, 449 U.S. 166 (1980) (Brennan, J., dissenting, joined by Marshall, J.).

This brief does not solicit the raising of the level of scrutiny applied to Article XIII A; however, should this Court determine that a level of scrutiny should be applied which requires more than a rational relationship to a conceivable state interest, Article XIII A should, for the reasons set forth below, yet be upheld.

**B. Equal Protection Analysis
Requires an Analysis of Both
the Purposes of the Challenged
Legislation as Well as the Means
Chosen to Achieve Those Purposes**

The two focal points of modern equal protection analysis have always been (1) the purposes and policies which the challenged legislation purports to advance and (2) the means employed by the legislation of advancing those policies.

**1. The Interests Served by Article
XIII A's Acquisition Basis
Are Not Merely "Legitimate,"
but Are "Important"**

Prior to the enactment of Article XIII A, California's volatile real estate market, in combination with the "current market value" system of property taxation, created situations where homeowners, many of whom were on fixed or limited incomes, were literally being taxed out of their homes. See Oates, *Capitalization Session: A Discussion*, 32 NAT'L TAX J. 111 (Supp. June 1979). In order to avoid this situation, yet still provide local governments with essential revenue, Article XIII A was drafted with the specific purposes of limiting taxes and providing a stable source of revenue firmly in mind.

The state's interest in devising a tax system that avoids circumstances whereby homeowners are forced to sell their property because they were unable to anticipate the impact of inflation on their tax bill must be recognized as much more than a mere "legitimate" interest.

**2. The Provisions of Article XIII A
Are Not Only Rationally
Related to Its Articulated
Purposes, but Are Substantially
Related to Those Purposes**

The disparity in taxes which the petitioner complains of were not unanticipated, nor are they the result of either sloppy drafting or of abuses within the system. On the contrary, Article XIII A is working precisely as the drafters of Proposition 13 had expected in 1978.

The 1% cap on the percentage of the property's acquisition value that can be taxed (Cal. Const. Art. XIII A, § 1(a)), along with the limitation on increases in taxable value to no more than 2% annually (Cal. Const. Art. XIII A, § 2), are *directly* related to the goal of providing property tax relief to California property owners. Indeed, in the first year after Article XIII A became operative, property taxes in California were reduced by \$7 billion.¹⁰

However, if these were the only two provisions of Article XIII A, local governments would have gone bankrupt long ago. Therefore, Article XIII A, Section 2, provides that property shall be reassessed to reflect the new acquisition value when the property is sold or developed. Without such a provision, the maximum 2% increase in taxable value would result in a decrease in revenue, in terms of real dollars, since inflation has significantly outpaced such a modest growth factor. Inclusion of this provision increased the value of county assessed property

¹⁰ University of California, *Proposition 13, 10 Years Later: Finances, Local Control and the Common Good*, Summary of Proceedings of Public Issues Forum at 2 (1988).

during the 1987-88 to 1988-89 tax years 9.7% to \$1.2 trillion. *State Board of Equalization 1988-89 Annual Report* at 23.

Thus, each of Article XIII A's primary provisions, including that which provides for reassessment upon change of ownership, are not only rationally related, but are directly and substantially related to its goals of real property tax relief and of ensuring local governments with a reliable source of revenue.

**3. Article XIII A Provides Tax
Limitations and Certainty for
New Property Owners as Well as
for Longtime Property Owners**

Where rights that are considered important, but not "constitutionally fundamental," are affected, this Court has imposed a higher level of scrutiny to economic legislation by viewing the challenged legislation from the perspective of the disadvantaged group. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432. Although petitioner considers new property owners in California to be the disadvantaged group vis-a-vis Article XIII A's distribution of tax burdens, even the petitioner must admit that Article XIII A bestows upon recent homeowners as well as longtime homeowners the undeniable benefits of knowing that their tax increases will be limited to 2% per annum. These limitations protect homeowners who are on permanently fixed or limited incomes from having their property taxed out from underneath them. Thus, the "disadvantages" of which the petitioner complains are more than offset by clearly discernible advantages.

4. The Rationales for Article XIII A's Various Provisions Are Not Ad Hoc Justifications, but Were Articulated Both at the Time Proposition 13 Was Enacted, as Well as During the Instant Litigation

As has been demonstrated above, Article XIII A's policies and purposes have been so clearly articulated and so well understood by the voters who enacted it that Article XIII A's defenders have not had to rely upon post hoc justifications for the system of property taxation Article XIII A imposes. When California's acquisition value basis of property taxation was first examined in *Amador*, the state Supreme Court found that Article XIII A's provisions formed an "interlocking 'package' . . . to assure effective real property tax relief." *Amador*, 22 Cal. 3d at 231. Since the *Amador* court's decision regarding the legitimacy of the purposes advanced by Article XIII A, there has been no reason to concoct additional purposes in order to justify Article XIII A's constitutional validity.

The fact that Article XIII A advances other legitimate state interests than those articulated in the ballot materials or in the litigation below¹¹ does not negate the fact

¹¹ Another plausible rationale for why a state might choose to appraise property based on its acquisition cost rather than its current market value is that

"[t]his practice arguably encourages all property owners, especially long term residents, to maintain their residences and improve the neighborhood. Such efforts will not be penalized by escalating appraisals. This policy may encourage community solidarity and cohesiveness as people build stakes

(Continued on following page)

that the important state interests of tax relief, tax certainty, and revenue stability are, themselves, sufficiently advanced by Article XIII A to warrant final affirmation of its constitutionality.

Application by this Court of a level of scrutiny that forecloses the consideration of any rationale that was not in the minds of those who enacted it, or in the minds of those charged with defending it before the courts, does absolutely no harm to Article XIII A.

CONCLUSION

Petitioner has not demonstrated why this Court should overturn California's deliberately chosen method of taxing property. Unlike the situation which confronted this Court in *Allegheny Pittsburgh*, there is no dispute that acquisition value based taxation is the law of this state. Article XIII A not only reflects a tax system supported by legitimate policies, all citizens of this state have relied on Article XIII A for the last 13 years in making important business and personal decisions. A ruling in petitioner's favor would wreak havoc in California on both a state-wide and individual level.

Petitioner's characterization of Article XIII A as "irrational" completely avoids analysis under "rational basis" scrutiny and appears to be no more than a claim that if any perceived inequity arises from a state's tax system,

in, loyalties to, and support for the community. In an increasingly mobile, transient society, a town may reasonably encourage stability." Glennon, *supra*, at 302.

such a system violates the Equal Protection Clause. Nowhere in the annals of Supreme Court jurisprudence has there ever been a hint that such a test would be adopted or even be workable. Such a test would destroy the principles of federalism and comity that have guided this Court in its deliberations over state actions and would be equally destructive of the "rational basis" standard of review.

Article XIII A is, in fact, more than "rationally based." Each of its provisions is substantially, if not directly, related to the legitimate state interests Article XIII A was designed to advance. For this reason, petitioner's equal protection challenge cannot prevail and this Court should affirm the decision of the California Court of Appeal.

DATED: January, 1992.

Respectfully submitted,

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No. 90-1912

In The
Supreme Court of the United States
October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, et al.,

Respondents.

On Writ Of Certiorari
To The Court Of Appeal Of The State Of California

**AMICUS CURIAE BRIEF OF THE
STATE OF CALIFORNIA
ON THE MERITS IN SUPPORT OF RESPONDENTS**

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AMICUS CURIAE BRIEF OF THE
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ON THE MERITS IN SUPPORT OF RESPONDENTS
—◆—

STATEMENT OF INTEREST OF THE STATE OF
CALIFORNIA AS AMICUS CURIAE

The State of California submits this brief pursuant to Rule 37 as amicus curiae in support of respondents and urges affirmance of the holding of the California courts below.

In 1978 the electorate of California enacted, as an initiative measure, Proposition No. 13 on the ballot. This measure amended the Constitution of the State of California with regard to the taxable value on which property taxes are based. The electorate approved Proposition 13 by an overwhelming margin and the result was a reduction in property taxes for most Californians.

Since the enactment of Proposition 13 in 1978, the governments of California, both state and local, have been wrestling with the implementation of Proposition 13. Because the property tax had been one of the primary sources of revenue for local governments prior to 1978, the approval of Proposition 13 resulted in a reduction of revenues to those entities. Proposition 13 also made it more difficult for local governments to raise new taxes because it imposed a supermajority requirement, two-thirds vote of the electorate, in order to do so. As a result, the State of California changed its financial structure in order for the local governments to carry out their statutory functions. This financial restructuring included revenue sharing from the state to local government and an increase of state funding of programs, primarily education. Given the financial restructuring resulting from Proposition 13, the governments of the state, cities, and counties of California have a vital interest in the outcome of petitioner's attack on the constitutionality of Proposition 13.

The State of California, through the Board of Equalization, has the statutory responsibility to ensure the uniform application of property tax laws in each of the 58 California counties. This is accomplished by the rule-making power of the Board of Equalization, Calif. Gov. Code, § 15606(c) and (e), and by other means. Calif. Gov. Code, § 15608. The Board of Equalization had a leading role in the initial implementation of Proposition 13 in each California county and continues to ensure that local practices are consistent with the current requirements of Proposition 13 and other property tax laws. A decision by this Court in this case affects the state's responsibilities for uniform application of property tax laws.

SUMMARY OF ARGUMENT

Petitioner and amici supporting petitioner (hereafter "amici") ask this Court to make a revolutionary holding: that because inflation exists, a property tax system that attempts to save taxpayers from the effects of inflation is unconstitutional. Pet. Br. at 7; Amicus Curiae William K. Rentz' Br. at 2. In other words, petitioner and amici argue that when inflation is present the Constitution requires a state to use only current market value as the taxable value in a state property tax system. When the presence of inflation is one of the reasons for abandoning the previous California property tax system, to argue that taxpayers cannot be protected from its effects does not express any presently known constitutional principle.

Proposition 13 attempted to deal with the extraordinary increase in property values and property taxes that occurred in California in the 1970's. Proposition 13 did this by limiting taxable value to market value at date of acquisition, plus an inflation cap of two percent per year for increases above that value. The question presented by petitioner and amici in this attack on the constitutionality of Proposition 13, is how far this Court should go in limiting the exercise of a state's sovereign powers. The history of this Court's interpretation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution shows clearly that after 1937 this Court has refused to make state tax policy under the guise of constitutional interpretation. The Court, in fact, exercises greater restraint in tax matters than in other subject matter areas, thereby enabling states, within broad limits, to control their own tax policy.

The property tax has been the major source of States' revenue for many years. The basic structure of the property tax, as implemented by every state prior to

California's adoption of Proposition 13, was always based on a taxable value of current market value. This Court has enforced state law, not dictated state tax policy, in property tax cases by holding that, if state law required *all property* to have a taxable value of current market value, the Equal Protection Clause prohibited the taxable value of some class of property being perpetually lower than current market value.

Proposition 13 generally mandates that the taxable value of property for property tax purposes is the market value as of the date of acquisition plus two percent per year above that value. Under the facts of this case it is clear that Proposition 13 meets the dictates of the Equal Protection Clause.

Petitioner and amici argue that the fact that Proposition 13 is embodied in state law has no constitutional significance. Petitioner, however, provides the very argument that makes Proposition 13's embodiment in state law constitutionally significant. She argues that the results of the application of Proposition 13, the amount of her taxes as compared to the amount of her neighbors' taxes, creates illegal classifications. Petitioner's argument raises, for the first time in the history of property tax litigation, the legality of the basic structure of a state property tax system: a state's definition of taxable value. When confronted with an argument concerning the legality of classifications in state tax law, this Court has generally deferred to the state tax policy dictating the classification, requiring only a rational basis for the legislation to survive. Proposition 13 meets this test because it is designed to protect taxpayers from the effects of inflation which would otherwise be realized through taxation on unrealized appreciation. Moreover, Proposition 13

serves the People's legitimate purpose to instill certainty in the state's system of property taxation by establishing predictability in the amount of taxes to be paid in the future.

Some of the amici argue that this Court should pay less deference to state law when faced with an initiative measure than when faced with an act of the California Legislature. Amicus League of Women Voters, Br. at 12, fns. 9 and 10; Amicus Building Industry Association of Southern California, Br. at 12-14. They are wrong.

The United States Constitution, in its preamble and in its Ninth and Tenth Amendments, expresses the general rule that "The People" granted some power to government while retaining the right to exercise powers not given. Although the Constitution of the United States creates a government of representative democracy, there is no prohibition on the right of the People to enact legislation themselves. When this is done in a lawful manner, pursuant to the Constitution and statutes of California and upheld by the California Supreme Court, it is not "Tyranny of the Majority" or "Mob Rule," it is an expression of democracy. The choice by the voters may be unwise, or poor tax *policy*, or it may even violate a provision of the United States Constitution, but it does not have any constitutional significance with respect to this Court's standard of review. An initiative enactment is entitled to the same measure of deference as any other legislative act.

ARGUMENT

I.

INTRODUCTION

A. The California Property Tax System Prior To June 1978

From the time of its admission into the union in 1850 until June 1978 California law prescribed the conventional ad valorem property tax system, wherein the taxable value of property was its current market value. At least this was the theory; practice, however, lagged behind the theory. It became an impossible administrative job to value every property in California counties each and every year at its current market value.¹ *Rittersbach v. Board of Supervisors*, 220 Cal. 535 (1934), 32 P.2d 135, cert. den. 293 U.S. 592 (1934). The inability of the local assessors in California to value each property at market value each year led to other challenges to the system. Some taxpayers who had been assessed at market value sought to have their assessments lowered because others were assessed at less than market value. *Crothers v. County of Santa Cruz*, 151 Cal.App.2d 219, 311, P.2d 557 (1957); *Wild Goose Country Club v. County of Butte*, 60 Cal.App. 339, 212 P. 711 (1922).

In *Best v. County of Los Angeles*, 228 Cal.App.2d 655, 39 Cal.Rptr. 665 (1964), the California Court of Appeal held that, when equality of assessments is the issue, the test of that equality is not a comparison to neighboring

¹ During the period prior to 1977, the assessment was 25 percent of market value and the tax rate applied to each \$100 of assessed value. See *Michaels v. Watson*, 229 Cal. App. 2d 404, 40 Cal. Rptr. 464 (1964). In 1977, California changed its law to make the assessment at 100 percent of market value, with a corresponding reduction in tax rates so that the change in assessment ratio did not increase taxes.

property, but a comparison to the county as a whole. *Id.* at p. 659. The *Best* case gave legal approval to the practice of assessors in making appraisals of the entire county on a cyclical basis, with some county cycles being five years. See *Merced County Taxpayers Assn. v. Cardella*, 218 Cal.App.3d 396, 397, 267 Cal.Rptr. 62 (1990). Petitioner is wrong in stating at page 11 of her Brief on the Merits that prior to Proposition 13 assessors implemented the system embodied in Proposition 13. This is wrong because the assessors, as directed by the State Board of Equalization, did not merely reassess properties that were purchased or newly constructed, but would value all property located in one part of the county each year. It is clear that under the property tax system in effect in California prior to the enactment of Proposition 13, there were inequalities as to current value and taxes on comparable property.

B. The Advent of Proposition 13

The inequalities of the previous system were exacerbated during the 1970's. The single most inflammatory factor causing the taxpayer revolt of 1978, which resulted in the enactment of Proposition 13, was the dramatic increase in the burden of the property tax on California homeowners. Ehrman and Flavin, *Taxing California Property*, Third Edition, Callaghan & Company (1989), vol. I, § 2.01. The price of homes was escalating dramatically during the 1970's, with increases in prices of 25 to 50 percent in a year not uncommon. *Id.* By mid-1978 the average price of a home in Southern California was nearly double the national average, and, more importantly, there were no corresponding reductions in the property tax rates. *Id.* Between 1962 and 1978, assessed values in California tripled, tax rates increased by 51

percent, and the taxes on property more than quadrupled. *Id.* The percent of assessed value in single family residences in California grew from 36.6 percent of the total property tax roll in 1974-75 to 41.4 percent in 1977-78. *Id.*² Amicus American Planning Association points out that between 1975 and 1989 the median-priced home in California increased 371 percent, going from \$41,690 to \$196,521. *Br.* at 6.

After Proposition 13 qualified for the ballot, the California Legislature acted to put a competing measure, Proposition 8, on the ballot. This measure would have enacted a "split assessment roll" permitting residential real property to be taxed at a lower rate than other property. *Id.* at § 2.02. In the June 1978 primary election, Proposition 13 passed and Proposition 8 was defeated. *Id.* As pointed out by Amicus League of Women Voters, the immediate result was a reduction in the property tax bills of California property taxpayers. *Br.* at 8.

After the passage of Proposition 13 there was a challenge to it on grounds that it violated the Equal Protection Clause and inhibited the constitutional right to travel, as well as on other grounds. The California Supreme Court upheld Proposition 13 in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 149 Cal.Rptr. 239, 583 P.2d 1281 (1978) (hereafter "*Amador*").

² The tax under the pre-Proposition 13 system approached two percent of the appraised value. This is not uncommon in states that have a current value system.

The *Amador* decision established the law in California from 1978 to this day. The *Amador* court held that Proposition 13 did not violate the equal protection of the laws, relying on United States Supreme Court rulings that established "[s]o long as a system of taxation is supported by a rational basis and is not palpably arbitrary, it will be upheld." *Id.* at p. 234. The *Amador* court distinguished the previous current value system from Proposition 13's acquisition value concept,³ and found the acquisition value system to be based upon the rational principle that an owner is able to predict his future property taxes. *Id.* at p. 235. In addition, the *Amador* court pointed out that the acquisition value system may be fairer in that the taxes will reflect what any owner, old or new, was willing to pay, and rejected, without reservation, the argument that property of equal current value *must* be taxed equally, regardless of original cost. *Id.* at p. 236.

The *Amador* decision also rejected the argument that Proposition 13 violated the constitutional right to travel. The argument presented to the court was that "nonresidents or newly arrived residents" will have to pay a greater amount of property taxes than established residents, inhibiting the right to travel by deterring movement to another location. The court rejected the argument by holding that Proposition 13 was intended to benefit all owners, past and future, resident and non-resident. *Id.* at p. 238.

³ Acquisition value is the market value of the property as of its change of ownership, not necessarily the purchase price. *Dennis v. County of Santa Clara*, 215 Cal.App.3d 1019, 263 Cal.Rptr. 887 (1989).

After this Court's decision in *Allegheny Pittsburgh Coal v. Webster County*, 488 U.S. 336 (1989), several California taxpayers seized upon a footnote in that case to again challenge Proposition 13. The lower California courts again upheld the initiative against these attacks. *Nordlinger v. Lynch*, 225 Cal.App.3d 1259, 275 Cal.Rptr. 684 (1990); *Northwest Financial, Inc. v. State Bd. of Equalization*, 229 Cal.App.3d 198, 280 Cal.Rptr. 24 (1991); *R.H. Macy & Co. v. Contra Costa County*, 226 Cal.App.3d 352, 276 Cal.Rptr 530 (1990), *cert. granted* 111 S.Ct. 2256 (1991), *cert. dismissed* 111 S.Ct. 2923 (1991). This Court should tell petitioners that the California courts have correctly resolved the questions.

II.

PROPOSITION 13 DOES NOT VIOLATE THE COURT'S HISTORIC EQUAL PROTECTION CLAUSE ANALYSIS

A. This Court In Modern Times Has Rejected All Invitations To Second-Guess The Wisdom Of State Tax Policies

Amicus State of California believes a review of the history of the Equal Protection Clause is important because that history demonstrates that petitioner's argument presents a unique issue to the Court and demonstrates why any adverse decision should be given prospective effect. The United States Supreme Court applied a "substantive due process" test to define the prohibitions of Due Process and Equal Protection Clauses from the enactment of the Fourteenth Amendment in 1868 until 1937. Both of these clauses were said to employ a similar test, a rational relationship between the legislation and the object of the legislation, and the result during this period was generally to overturn the legislation

because the Court found it to be arbitrary. See *Lochner v. New York*, 198 U.S. 45 (1905). The beginning of the change was Justice Holmes' dissent in *Lochner*. Justice Holmes stated in pertinent part:

"This case is decided upon an economic theory which a large part of the country does not entertain. If it were a question whether I agreed with that theory, I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I believe my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law . . . The Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics. . . ." *Id.* at p. 75.

For much of the 30-year period following *Lochner*, Justices Holmes and Brandeis dissented when a decision found a statute to be unconstitutional, *Louisville Gas Co. v. Coleman*, 277 U.S. 32 (1928), *Quaker Cab Co. v. Penna*, 277 U.S. 389 (1928), *Royster Guano Co. v. Virginia*, 253 U.S. 412 (1920), and wrote the opinion for the court when the classification was upheld, *White River Co. v. Arkansas*, 279 U.S. 692 (1929), *Quong Wing v. Kirkendall*, 223 U.S. 59 (1912). See also Justice Brandeis' dissent in *Liggett Co. v. Lee*, 288 U.S. 517, 541 (1933).

The cases of *Nebbia v. New York*, 291 U.S. 502 (1934) and *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937) completed the change. *Nebbia* rejected a due process challenge to the fixing of the price of milk by New York and *West Coast Hotel Co.* rejected a due process challenge to a state minimum wage law. These were the very type of statutes that were being overturned under the substantive due process approach. The Court's analysis of the Equal Protection Clause followed this change. *Metropolitan Co. v. Brownell*, 294 U.S. 580 (1935). See *Lincoln Union v. Northwestern Co.*, 335 U.S. 525, 536 (1949). The

Court's modern approach has been described as the rational basis test. A major premise of the rational basis test is that even improvident decisions will eventually be corrected by the democratic process. *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 440 (1985).

Under the rational basis test, the purpose of the Equal Protection Clause is not to prohibit all discrimination, but only that which is found to be invidious. The Court presumes the statute is constitutional and puts the burden on the challenger to prove that invidious discrimination has taken place. This approach usually results in a finding that the discrimination is not invidious. This Court has recognized in this process " . . . the courts are not empowered to second-guess the wisdom of state policies. [Citation omitted.] Our review is confined to the *legitimacy* of the purpose." *Western & Southern L.I. Co. v. Bd. of Equalization*, 451 U.S. 648, 670 (1981); emphasis in original.

In *San Antonio School District v. Rodriguez*, 411 U.S. 1 (1973), this Court reviewed the traditional standard of review of the Equal Protection Clause, requiring only that the " . . . state's system be shown to bear some rational relationship to legitimate state purposes. . . . " *Id.* at p. 40, and then stated:

" . . . We have here nothing less than a direct attack on the way in which Texas has chosen to *raise* and disburse state and local tax revenues. We are asked to condemn the State's *judgment*. . . . " *Id.*; emphasis added.

The Court declined to do so in the following words:

"Thus, we stand on familiar ground when we continue to acknowledge that the Justices of this Court lack both the expertise and familiarity with local problems so necessary for the making of wise decisions with respect to the *raising* and

disposition of *public revenues*. . . . " *Id.* at p. 41; emphasis added.

The *San Antonio School District* case rejected any court interference with a state's judgment on how public revenues are raised. This is the precise issue raised by this case.

B. Proposition 13 Comes Within The Decisions Of This Court Upholding Property Tax Statutes

Tax statutes have been analyzed differently from non-tax statutes by this Court. This undoubtedly was because taxation is an essential ingredient of government. See *Brown-Forman Co. v. Kentucky*, 217 U.S. 563 (1910) and *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911). The Equal Protection Clause requires all taxpayers that are similarly situated to be treated with rough equality. *Allegheny Pittsburgh Coal v. Webster County*, 488 U.S. at p. 343.

Prior to the enactment of Proposition 13 in California in 1978, every state of the union employed the standard ad valorem system of property taxation, wherein the taxable value of property was the current market value of the property. The problem this system engendered was not one of classification, because all properties were in the same general classification of current market value, but one of administration of the state law that would comply with the requirements of the United States Constitution. See *Cumings v. National Bank*, 101 U.S. 153 (1879).

This Court has consistently held that discriminatory taxation contravening the express requirements of *state law* is violative of the United States Constitution. *Green v. Louis & Interurban R.R. Co.*, 244 U.S. 499 (1917); see *Raymond v. Chicago Tractor Co.*, 207 U.S. 20 (1907) and *Sioux City Bridge v. Dakota County*, 260 U.S. 441 (1923). It

became established United States Supreme Court doctrine that:

" . . . intentional systematic *undervaluation* by state officers of other taxable property in the same class contravenes the constitutional right to be taxed upon the full value of his property. . . . " *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350, 352-353 (1918); emphasis added; see *Cumberland Coal Co. v. Board*, 284 U.S. 23, 28 (1931), *Hillsborough Township v. Cromwell*, 326 U.S. 620, 623 (1946).

Allegheny Pittsburgh Coal v. Webster County, 488 U.S. 336, involved the traditional property tax single classification where the taxable value of all property was current market value. The lower court decision in that case, *In re 1975 Tax Assessments Against Oneida Coal Co.*, 360 S.E.2d 560 (W.Va. 1987), makes it clear that West Virginia had the same problems as pre-Proposition 13 California had in administering its current value system. See *Rittersbach v. Board of Supervisors*, 220 Cal. 535, *Crothers v. County of Santa Cruz*, 151 Cal.App.2d 219, and *Best v. County of Los Angeles*, 228 Cal.App.2d 665. The West Virginia Supreme Court stated that West Virginia law required that:

" . . . taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law." 1975 *Tax Assess. Against Oneida Coal Co.*, 360 S.E.2d 560, at p. 562.

This Court in *Allegheny*, 488 U.S. 336, reiterated that the constitutional requirement is the " . . . seasonable attainment of a rough equality in tax treatment of similarly situated property owners. . . . " *Id.* at p. 343. In *Allegheny*, the similarly situated properties were every property in the county because of the single classification of current market value. The Webster County Assessor violated this requirement because newly-sold property

was assessed at 50 percent of the value as shown on the deed and properties that were not resold were assessed at old values with only minor value modifications. This Court found that method insufficient to " . . . seasonably dissipate the remaining disparity . . . " between the assessments on the newly-sold property and the properties that were not newly-sold. *Id.* at p. 344.

In *Allegheny*, this Court recognized the right of the state to divide taxpayers into reasonable classifications, *id.*, but found that " . . . West Virginia had not drawn such a distinction. . . . " *Id.* at p. 345. The West Virginia procedure was applied on the Webster County Assessor's own initiative and not pursuant to the law of West Virginia. Such an act resulted in intentional, systematic undervaluations by the Webster County Assessor and, for that reason, violated the Equal Protection Clause. Thus, while the *Allegheny* decision is consistent with those decisions by this Court involving property tax systems predicated on taxable value as current market value, the holding of that case was based upon unequal treatment by local tax authorities and not upon installation of current market value as the only constitutionally permissible system.

In order to determine whether Proposition 13 meets the requirements of the Equal Protection Clause, as discussed in *Allegheny*, it is first necessary to draw a distinction between the West Virginia law and the California law. Proposition 13 changed California's previous current value property tax system to one based on acquisition value. In reality California has adopted a single classification, taxable value based upon acquisition value instead of current value. This system meets the requirement of " . . . seasonable attainment of a rough equality in tax treatment of similarly situated property owners . . . "

because property taxes for similarly situated property in California are based upon acquisition value.⁴ Indeed, petitioner does not argue otherwise because she admits that property is taxed at its acquisition value. Pet. Br. at 18.

Proposition 13 does not result in intentional, systematic *undervaluations* that have been condemned by this Court. Terms such as "undervaluation" pose problems when attempting to analyze any factual situation because they presume a standard against which to measure. In *Allegheny*, the state law set the taxable value standard at current market value. Proposition 13 sets the taxable value standard at acquisition value. In that context there would be no "undervaluation" if comparably priced properties bearing the same acquisition date have similar acquisition date values. Any argument concerning "undervaluation" wrongly presumes that the United States Constitution requires the states to use a current value system.

Amicus International Association of Assessing Officers relies on effective tax rates and coefficients of dispersion to show inequalities. Br. at 11-12. Assuming the presence of inflation, the acquisition value system will show that those properties that do not sell will be assessed at less than those that do sell. That is a reflection of the Proposition 13 acquisition value system. Similarly, the coefficient of dispersion for California will always show a difference between assessed values and current market values. Amicus International Association of

⁴ Amicus International Association of Assessing Officers misstates the effect of Proposition 13 when it states that properties are "... assessed and taxed in a variety of ways. ..." Br. at 14.

Assessing Officers points out that California ranks thirty-third in coefficient of dispersion, well within the mainstream of recognizable measures of central tendency.

C. The Amount Of Petitioner's Taxes Does Not Define Any Unconstitutional Classification

The above review makes it clear that, in matters of property taxation, the legality of the basic structure of the property tax was never an issue because all state property taxes used current market value as the taxable value. Petitioner challenges, for the first time, the legality of the basic structure of a state's property tax system, that is the definition of taxable value, in the guise of "classification." Since this is the first time that this issue has arisen in a property tax case, decisions in tax cases other than property taxes should guide the analysis.

The case of *Ohio Oil Co. v. Conway*, 281 U.S. 146 (1930) provides a good point of reference to make this analysis. In that case, prior to 1928 the State of Louisiana levied an oil severance tax based upon the value of the oil. In 1928 the state law changed the tax base from value to quantity severed. One of the contentions of *Ohio Oil* was that the state was constitutionally required to base its tax upon the value. *Id.* at p. 161. The Court called that contention "... wholly inadmissible. ..." *Id.* The Court refused to subject the state's taxing power to such an intolerable supervision, which supervision is beyond the protection of the Fourteenth Amendment. The Court stated:

"... The States have a wide discretion in the imposition of taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the national government or violating the guarantees of the Federal Constitution, the States have the attribute of sovereign power in devising their fiscal systems

to insure revenue and foster their local interests. . . . " *Id.* at p. 159; see also *Allied Stores v. Bowers*, 358 U.S. 522, 526-527 (1954).

To this end, the Court in *Madden v. Kentucky*, 309 U.S. 83 (1940) stated:

" . . . Traditionally classification has been a device for fitting tax programs to local needs and usages in order to achieve an equitable distribution of the tax burden. It has, because of this, been pointed out that in taxation, even more than in other fields, legislatures possess the greatest freedom in classification. . . . "

" . . . [T]he presumption of constitutionality can be overcome only by the most explicit demonstration that a classification is a hostile and oppressive discrimination against particular persons and classes. . . . " *Id.* at p. 88; footnotes omitted. See also *Carmichael v. Southern Coal Co.*, 301 U.S. 495 (1937).

Thus, classifications in tax matters have generally not been found to involve invidious discrimination. The Court has upheld the California inheritance tax statute that resulted in inequalities in the amount of the tax between taxpayers, *Stebbins v. Riley*, 268 U.S. 137 (1925), a license fee on chain stores which fee per store increased as the number of stores in the chain increased, *Tax Commissioners v. Jackson*, 283 U.S. 527 (1931), *Atl. & Pac. Tea Co. v. Grosjean*, 301 U.S. 412 (1937), a classification for taxes imposed only on public utilities, *Rapid Transit Corp. v. New York*, 303 U.S. 573 (1938), an exemption from ad valorem taxation for products belonging to a nonresident if held in storage, *Allied Stores of Ohio v. Bowers*, 358 U.S. 522 (1959), a statute which abolished personal property taxes for individuals but not for corporations, *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973), and an insurance retaliatory tax imposed only on some out-of-

state insurance companies. *Western & Southern L.I. Co. v. Bd. of Equalization*, 451 U.S. 648.⁵

This Court's approach was stated in *Kahn v. Shevin*, 416 U.S. 351 (1974), at 355, quoting *Lehnhausen v. Lakeshore Auto Parts Co.*, 410 U.S. 356, 359, as follows:

" . . . We have long held that '[w]here taxation is concerned and no specific federal right, apart from equal protection, is imperiled, the states have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation.' " *Id.* at p. 355; emphasis added.

If it is at least debatable whether the state lawmakers " . . . rationally could have believed . . . " that the legislation would promote an objective of a legitimate state purpose, parties challenging the legislation under the Equal Protection Clause cannot prevail. *Western & Southern L.I. Co. v. Bd. of Equalization*, 451 U.S. 648, 670, 672, 674; emphasis in original. In *New Orleans v. Dukes*, 427 U.S. 297 (1976), this Court upheld a classification based upon the length of operating a business. The Court stated:

"When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. . . . " *Id.* at p. 303, citation omitted.

Soon after passage of Proposition 13, *Amador* resolved the same questions that are raised in this petition and no petition for certiorari was taken to this Court at that time. Now, 14 years after the enactment of Proposition 13, petitioner attacks it on the basis that the

⁵ This Court in *Bell's Gap Railroad Co. v. Pennsylvania*, 134 U.S. 232 (1890) rejected an argument that securities and bonds must be taxed at their market value. In that case the court held that there may be some justified discrimination in tax laws.

passage of time has shown some results (i.e. amount of taxes) that make the statute unconstitutional. Petitioner's sole reliance on the amount of taxes misperceives the standards set by this Court in an Equal Protection Clause analysis.

Petitioner's argument that the amount of taxes she pays, as compared to the amount of taxes her neighbor pays, creates an illegal classification, is based upon an assumption that leads to an erroneous constitutional analysis. If inflation did not exist, the petitioner's value and taxes would be the same as her neighbor's comparable property, no matter what the date of acquisition. In order to argue an illegal classification based on the amount of taxes, petitioner must assume perpetual inflation. Inflation in real estate prices is not an inevitable phenomenon and should not control constitutional analysis for two reasons. First, adoption of such an analytical framework would mean that a statute unconstitutional during an inflationary period may "become" constitutional during an ensuing period of deflation such as the Great Depression. Second, the increase in real estate prices vary from state to state. Thus, one state with little or no increase in real estate prices may be able to adopt the Proposition 13 system and attain the required rough equality of tax treatment of similarly situated properties, while another state with high increases in real estate prices may be prevented from adopting the same system. Petitioner's argument thus fails as an expression of constitutional principle.

Petitioner's argument that classification is created by amount of taxes paid also ignores that this Court has looked at the amount of taxes only in limited circumstances. Generally, the Commerce Clause forbids higher state taxes on out-of-state businesses than in-state businesses. Thus, the Court often looks to the amount of taxes

for its Commerce Clause analysis. Insurance companies have been exempted from coverage of the Commerce Clause in the McCarran-Ferguson Act, 59 Stat. 33, 15 U.S.C. § 1011 et seq., *Western & Southern L.I. Co. v. Bd. of Equalization*, 451 U.S. 648, 653, and the Court looks to the Equal Protection Clause to protect out-of-state insurers from being taxed more than in-state insurers, under certain circumstances. See *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 880 (1985). Even if these holdings were extended to invalidate all promotion of domestic business by discriminating against nonresident competitors, these cases do not apply because Proposition 13 has not been shown to result in tax differentials between in-state and out-of-state businesses. The property of both in-state business and out-of-state business are treated the same under Proposition 13. Each will be taxed on the acquisition value of its property.

Petitioner's argument that the amount of taxes paid creates separate classifications does not aid her. Assuming for purposes of argument that there is classification based on the difference in amount of taxes, the approach taken by Proposition 13 is rationally related to its object because it implements a basic economic principle: that planning for those future tax expenditures is preferable to not being able to plan for future tax expenditures. In actuality, the real-life effect of acquisition value is to fix in time when a property owner can determine future property tax expenditures. Such planning was not possible under the previous California property tax system because neither inflation nor rates of tax could be predicted with any certainty. California voters, with the enactment of Proposition 13 in 1978 told government that such planning is important. *Amador*, 22 Cal.3d 208, held

that this was one of the rational bases of the enactment of Proposition 13. *Id.* at p. 235.

It was the inflation in the price of property that spawned Proposition 13 and it is inflation about which petitioner is complaining. She claims that she will pay about \$1,700 per year in property taxes while her neighbors, who purchased homes in 1975, will pay only \$412 per year. Using the statutory tax rate of one percent indicates that these homes have risen from a market value of about \$41,000 in 1975 to \$170,000 in 1988. The person whose date of acquisition is 1975⁶ will pay lower taxes than one, like petitioner, who purchases a comparable property in 1988. The person who purchases in 1988, however, will pay lower taxes than someone purchasing a comparable property in 1992. Petitioner may pay a higher amount of taxes than some, but in the long run she will pay a lower amount of taxes than many others. One of the primary purposes of Proposition 13, to protect taxpayers from being taxed on the unrealized appreciation of their property, is available for everyone who purchases real property in California.

Indeed, to persons on a fixed income who owned property in 1978, it would seem as unfair to them to have a taxable value of \$170,000 in 1988, an expectation they may never have had, as it is to petitioner to have a taxable value as of her date of acquisition. In contrast, granting petitioner's underlying assumption of perpetual inflation, it is clear in comparing amounts of tax paid that, in the long run, everyone benefits equally from the

⁶ Many properties with a 1975 acquisition date may not reflect 1975 market value because of the physical impossibility faced by assessors in switching from a current value system to an acquisition value system. The California Legislature enacted statutory guidelines to resolve this administrative problem.

general provisions of Proposition 13. Petitioner is wrong in asserting that the tax system imposes a barrier for new homeowners. The real barrier is not the tax amount, but the escalation of sale prices in petitioner's neighborhood.

III.

PROPOSITION 13 SHOULD NOT BE JUDGED UNDER A HEIGHTENED SCRUTINY STANDARD FOR ANY REASON AND DOES NOT INHIBIT THE CONSTITUTIONAL RIGHT TO TRAVEL

A. Heightened Scrutiny Should Not Be Applied To Test The Constitutionality Of Proposition 13

Under the rational basis test the state law is presumed to be constitutional. This Court has held that in some circumstances constitutionality will not be presumed, thus applying a stricter standard to determine the validity of the state law. The cases in which this stricter standard is employed, however, have involved state classifications that relate to "sensitive and fundamental rights." *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 172 (1972).

The foundation of the stricter test has been said to be a footnote in the case of *U.S. v. Carolene Products Co.*, 304 U.S. 144 (1938), wherein the Court suggested a higher standard for legislation involving "... prejudice against discrete and insular minorities. ..." *Id.* at pp. 152-153, fn. 4. See *Graham v. Richardson*, 403 U.S. 365, 372 (1971) and *Sugarman v. Dougall*, 413 U.S. 634, 642 (1973). There are some areas where the Court applies a very strict scrutiny standard and there are some areas where there is an acknowledged middle tier of analysis between rational basis and strict scrutiny, such as in gender-based discrimination. See *Craig v. Boren*, 429 U.S. 190, 210 (1976) (conc. opn. of Justice Powell).

As this Court stated in *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432 (1985):

" . . . [h]eightedened scrutiny inevitably involves substantive judgments about legislative decisions. . . . " *Id.* at p. 443.

Such substantive judgments by this Court should not become the norm, as petitioner suggests.

Proposition 13 does not discriminate against any group that has been provided heightened protection under this Court's Equal Protection Clause analysis. The general provisions of Proposition 13 subject everyone who purchases property in California to the same tax treatment, based on value as of the acquisition date. Nor does the amount of taxes establish any classes that are subject to heightened scrutiny under traditional Equal Protection Clause analysis. The distinction between persons who have owned property since 1975 and persons who have acquired property after 1975 does not define any protected class. Proposition 13 requires reassessment upon objective and neutral criteria, a change of ownership or new construction. Reassessment under the general provisions of Proposition 13 has nothing to do with who the purchasers are or where they come from.

Amicus League of Women Voters attempts to establish a significant distinction between long-term homeowners and short-term homeowners. Br. at 11. This distinction is not sound for two reasons. First, it assumes perpetual inflation and such an assumption should not be the basis of constitutional analysis. Second, even if perpetual inflation is assumed, there can be no showing that Proposition 13 is detrimental to petitioner. Petitioner's property rose in value from \$170,000 in 1988 to \$205,000 in 1989, Joint Appendix, p. 20, an increase of 20 percent in the first year of ownership. It is now four years after petitioner purchased her home and she continues to pay

taxes on her adjusted acquisition value, while others who pay current prices are taxed on their higher acquisition values. The question is whether petitioner is a short-term homeowner, incurring a detriment, or a long-term homeowner, enjoying a benefit. Employing petitioner's assumption of perpetual inflation, the answer is that she is both, and this is the real reason no group can be identified as being discriminated against by Proposition 13. Any analysis of the effects of Proposition 13 will not lead to a heightened scrutiny because virtually everyone benefits in some way from Proposition 13 and virtually everyone is burdened in some way by Proposition 13.

B. Proposition 13 Does Not Inhibit The Constitutional Right To Travel

Petitioner raises the right to travel issue solely in an attempt to argue for heightened scrutiny. This effort must fail.

Although the textual source of the right to travel guaranteed by the Constitution is not entirely clear, it has been described as a right to interstate migration, *Zobel v. Williams*, 457 U.S. 55, 66 (1982) (Brennan, J. concurring) and as a fundamental right to settle in another state, *Attorney General of N.Y. v. Soto-Lopez*, 476 U.S. 903, 920 (1986) (O'Connor, J. dissenting). The right to travel is implicated only when a state law actually deters travel, when impeding travel is its primary objective, or when it seeks to penalize the exercise of the right. *Id.* at 903 (plurality opn. of Brennan, J.). There has been no showing by petitioner that Proposition 13 has actually deterred travel of any person or business or that Proposition 13 actually penalizes taxpayers for exercising the right to travel. It is not argued, and has not been shown, that the primary objective of Proposition 13 was to impede travel.

As shown above, Proposition 13, by its terms, applies equally to all purchasers, whether they are long-term California residents or newly-arrived California residents. Indeed, the pejorative term "welcome stranger" used by petitioner and amici does not apply to Proposition 13.

Amicus International Association of Assessing Officers illustrates why the right to travel is not inhibited by Proposition 13. In attempting to show the impact of Proposition 13, amicus inserts a table. Br. at 3. This table does not depict the true impact of Proposition 13 for two reasons. First, the table assumes a rate of four percent of acquisition value, while, in reality, Proposition 13 mandates a tax rate cap of one percent. Second, the assessed value in California is the acquisition value plus two percent per year, and the table does not reflect this increase.

The table does, however, depict the property tax as implemented in other states. Using the information in that table, petitioner would be paying more than \$8,000 in taxes (\$205,000 x .04) instead of the less than \$2,000 she pays under Proposition 13. At minimum this table shows that people moving from other states to California would enjoy a tax reduction upon purchasing comparably priced property in California and have their future taxes benefited by applying the acquisition value concept. This surely does not inhibit or deter anyone from moving from a current-value state to California.

IV.

ASSUMING FOR PURPOSES OF ARGUMENT THAT THIS COURT INVALIDATES THE ACQUISITION VALUE CONCEPT CONTAINED IN PROPOSITION 13, THE DECISION SHOULD BE APPLIED PROSPECTIVELY ONLY

This Court currently grants wider latitude in civil cases than in criminal cases as to the date a decision is

effective. In *Griffith v. Kentucky*, 479 U.S. 314 (1979), the Court announced that all criminal decisions will be applied retroactively. The Court, however, has struggled with the issue of prospectivity and retroactivity in recent tax cases. *McKesson v. Division of Alc. Beverage*, 100 S.Ct. 2238 (1990); *American Trucking Assns. v. Smith*, 110 S.Ct. 2323 (1990); *Jim B. Beam Distilling Co. v. Georgia*, 111 S.Ct. 2939 (1991). The case at bar presents much different questions than these tax cases, and any analysis of prospectivity in this case should be grounded on the principles contained in the leading civil case on the subject, *Chevron Oil v. Huson*, 404 U.S. 97 (1971).

In *Chevron Oil*, this Court enunciated a three-part test to determine whether a decision would be given prospective or retroactive effect. The test contained the following elements:

1. Whether the court announces a new principle of law – this could be done by overruling precedent or by deciding a case of first impression whose resolution was not clearly foreshadowed;
2. Whether application of prospective application would further or retard the operation of the law; and
3. Whether there is inequity imposed by a strict retroactive operation of the decision.

Application of these tests should result in a prospective application for any adverse decision on Proposition 13.

The historical development of the interpretation of the Equal Protection Clause in tax cases shows clearly that states are given broad latitude to develop their own tax systems. California has done this with its adoption of Proposition 13. If this Court invalidates Proposition 13, it must do so by overruling or severely limiting established

precedent, and should confine any such ruling to prospective application only. It is clear that Proposition 13 does not create an illegal classification under existing precedent and meets the historic standards of the rational basis test.

In addition, as pointed out above, current value had been the only basis of taxable value in property tax systems until 1978, when Proposition 13 was enacted. Petitioner presents, for the very first time, the question of whether the very heart of a state's property tax system, the definition of taxable value, is legal. Thus, if the court holds that it is not legal, it has decided a case of first impression whose resolution was not clearly foreshadowed. This is the enunciation of a new rule of law subject to prospective application under *Chevron Oil v. Huson*, 404 U.S. 97.

The reason a decision adverse to the State of California in this case must be applied prospectively is the chaos and uncertainty the decision will have on the population of the State of California. The financial relationships between different levels of California government have been restructured since the adoption of Proposition 13 in 1978. The property tax was the main source of revenue to California cities and counties until 1978. This revenue to cities and counties has had a relative decline since 1978, and thus other forms of taxation, and state cost-sharing, have replaced the previous structure. The financial structure of the State of California is now built in part on its response to Proposition 13, and any undoing of Proposition 13 will require time to reconfigure the financial structure of the state.

Here are some of the questions that must be answered before a reasoned response to an overturning of Proposition 13 can be implemented:

1. Does a decision invalidating Proposition 13 mean that California is required to use a current value property tax system?

2. Does a decision invalidating Proposition 13 require, permit or prohibit levy of escape assessments authorized by California law for the past four years?⁷ Cal. Rev. & Tax. Code, §§ 531-532. See also amicus Cal. Assessor's Association, Br. at A-2.

3. Does the financial picture of local governments change because of an adverse decision, and if so, how?

4. Do local governments need to increase budget and staff to implement the system that results from an adverse decision? See Appendix.

5. How does an adverse decision impact the budget of the state?

These are only a few of the very difficult questions that must be answered before any response to an adverse decision could be determined. A retroactive effect of the overturning of Proposition 13 will create uncertainty and potential chaos for the State of California. These are the considerations that *Chevron Oil v. Huson*, 404 U.S. 97, must have been contemplating when it set forth the rules governing prospective application. Prospective application is required from the standpoint of both law and equity. As this Court held in *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803 (1989), the state courts may be in the best position to determine how to comply with the mandate of equal treatment. The State of California agrees with petitioner that if this Court holds Proposition 13 unconstitutional, it should remand to the state courts for appropriate relief. Pet. Br. at 50.

⁷ An escape assessment is authorized for past years when property is not on the local roll or when underassessed. See Cal. Rev. & Tax. Code, § 532.

In 1978, the adoption of Proposition 13 by an overwhelming majority of California voters discarded a century-old system of property taxation and replaced it with what has become the established revenue structure of that state. The establishment of that structure has been momentous and has had far-reaching consequences to virtually all elements of California's system of revenues. Any undoing of Proposition 13 will result in chaos in the California financial structure, and an opportunity to deal with these problems should be granted to the state before any adverse decision by this Court is made effective. The State of California agrees with the position taken by the California Assessor's Association in its Amicus Brief on this question.

CONCLUSION

For the foregoing reasons, the judgment of the California Court of Appeal should be affirmed. If that judgment is not affirmed, then this Court's decision should be given prospective effect.

Respectfully submitted,

DANIEL E. LUNGREN
Attorney General of the
State of California

ROBERT D. MILAM,
Counsel of Record
Deputy Attorney General

*Attorneys for Amicus Curiae
State of California*

APPENDIX

STATE OF CALIFORNIA

(Seal)

STATE BOARD OF EQUALIZATION

1020 N Street, Sacramento, California
(P.O. Box 942879, Sacramento, California 94279-0001)
(916) 445-4982

WILLIAM M. BENNETT
First District, Kentfield

BRAD SHERMAN
Second District, Los Angeles

ERNEST J. DRONENBURG, JR.
Third District, San Diego

MATTHEW K. FONG
Fourth District, Los Angeles

GRAY DAVIS
Controller, Sacramento

BURTON W. OLIVER
Executive Director

CAO 91/26

December 18, 1991

TO COUNTY ASSESSORS ONLY:

QUESTIONNAIRE ON IMPLEMENTATION OF MARKET VALUE ASSESSMENT ROLL

The passage of Proposition 13 on June 6, 1978 required assessors to make radical changes to their assessment rolls in a very short time. Although the job was difficult, the assessors were able to make appropriate adjustments to all real property values and deliver their rolls by the end of July. Most of these rolls contained numerous

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errors, but the great majority of the assessments were made correctly.

The *Nordlinger* case raises the possibility that assessors will have to reverse course, to change their Proposition 13 rolls to market value rolls. A decision in the *Nordlinger* case is expected as early as April but as late as July 1992. If the Court invalidates Section 2 of Article XIII A, it is likely the Court would allow the state to return to a market value system on an orderly basis. However, it is possible that the 1992 assessment rolls will have to reflect equalized market value.

In either case, the entire assessment community will be faced with a very difficult job. In 1978, most of the data needed to adjust the assessments existed in the assessors' offices, and the assessors had large appraisal staffs as compared to today. A change to a market value assessment system will no doubt be much more difficult than the 1978 change to the Proposition 13 system.

Enclosed is a questionnaire that is designed to provide early identification of the major administrative problems that would be faced by assessors and the Board in the event the Supreme Court invalidates the assessment provisions of Proposition 13. The results of the questionnaire should help assessors, the Board, and the Legislature prepare for an orderly return to a market value assessment program in the event the Supreme Court requires us to do so.

Many if not most of the questions ask you to "estimate" or to make statements about methods you "would use" under various circumstances. These are highly subjective questions; please be assured we will not use your

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responses to evaluate your assessment operation. Also, the "early" nature and short time for answering this questionnaire must be emphasized. We presume that many of your answers will change as more thought is given to planning for a return to market value.

In addition to the questionnaire, an extract from our last pre-Proposition 13 Budgets and Workload is enclosed. You may find the data helpful in estimating staffing needs for an equalized roll.

Please mail your responses by December 31, 1991. If you have questions, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,
/s/ Verne Walton
Verne Walton, Chief
Assessment Standards
Division

VW:sk
Enclosures

County _____

**PROPOSITION 13 -
U.S. SUPREME COURT QUESTIONNAIRE**

ASSUMPTIONS

- The U. S. Supreme Court invalidates the acquisition value concept (reappraisal upon change in ownership or new construction) in June 1992.
- County assessors are required to return to a market value, mass appraisal system.
- Unless otherwise indicated, the assessor is required to produce a market value roll for the 1992/93 assessment year.

QUESTIONSStaffing

1. Please indicate your existing staff level (for "a" through "d," include "working" supervisors - these are supervisors who spend one-half or more of their time performing work similar to the work performed by their subordinates):
 - a. ___ Real Property Appraisers
 - b. ___ Business Property Appraisers
 - c. ___ Transfer (Change in ownership) staff
 - d. ___ Clerical
 - e. ___ Administrators
 - f. ___ Other (Cadastral drafting, etc.)

2. Of those, how many have experience in a market value, mass appraisal environment (as contrasted with the post-Proposition 13 environment)?
 - a. ___ Real Property Appraisers
 - b. ___ Business Property Appraisers
 - c. ___ Clerical
 - d. ___ Administrators
3. (a) Over the short-term (up to 1 year), would you need to increase your staff level to produce a 1992/93 equalized roll?

More appraisers ___Yes ___No

More other staff ___Yes ___No

(b) Of these, what portion will be temporary staff for the transition period only?

___ Small

___ Medium

___ Large

(c) Do you expect to make temporary hires of appraisers with pre-13 experience? ("Pre-13 appraisers" are those experienced in mass appraisal practices.)

___Yes

___No
4. (a) Over the long-term (1-5 years), do you think that you will need more real property appraisers or other staff in order to produce an annual equalized roll?

More appraisers ___Yes ___No

More other staff ___Yes ___No

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(b) If so, what do you think would be the magnitude of the needed increase in your appraisal staff?

___ Appraisers

___ Other Staff (Please identify _____.)

Training

5. Please estimate the amount of *additional* training, if any, your *existing* appraisal staff would need to adapt to a mass appraisal environment.

___ days of training per appraiser, pre-13 appraisers.

___ days of training per appraiser, post-13 appraisers.

6. Please estimate the amount of additional training you would expect from the Board (over and above existing levels) during 1992-93 by indicating the number of attendees for:

___ Two-day workshops (appraisers and others)

___ Four-day classes (existing appraisers)

7. If you anticipate hiring additional appraisal staff, please estimate the amount of training you would request from the Board for these new appraisers (1992-93 only) by indicating the number of new appraisers you would send to each of the classes identified below:

___ Course 1 - Introduction to Appraising for Property Tax Purposes.

___ Course 2a - Replacement Cost Estimating of Residential Structures.

___ Course 3 - Residential Appraisal Procedures.

___ Other Courses (Please specify _____.)

App. 7

8. What additional classes do you feel that the Board can provide to assist your office during the transition period if Proposition 13 is invalidated?

9. Do you recommend that any mass appraisal classes be conducted before June 1992 in anticipation of Proposition 13 being overturned?

___ Yes

___ No

Workload

10. What is the total number of secured parcels in your county (as of March 1, 1991)?

___ secured parcels

11. If possible, please provide by property types:

a. Residential _____

b. Commercial _____

c. Industrial _____

d. Agricultural _____

e. Others _____

12. If you were required to assess all real property at market level, please estimate the effect on your appeals workload. (Number of appeals filed.)

___ Existing workload (Proposition 13 roll)

___ Equalized roll workload

App. 8

13. (a) Could you produce a market value assessment roll by August 1, 1992 (Assuming a one-month transition period when a decision is rendered by the U.S. Supreme Court)?

___ Yes

___ No

(b) If so, please identify what you think would be the three most severe limitations of that roll in comparison to a market value roll produced assuming full preparedness.

1. _____

2. _____

3. _____

14. (a) If you could not produce a market value roll by August 1, 1992, please list the major reasons why (e.g., lack of staff, lack of trained staff, lack of mass appraisal computer systems).

(b) If you could not produce a market value roll by August 1, 1992, by what date do you think you could?

App. 9

15. (a) Once you have produced a market value roll for 1992-93, to what extent would you be able to overcome the limitations described in 13(b) above for the 1993-94 roll?

(b) To the extent that limitations persist in 1993-94, which would be the most formidable; i.e., which would persist beyond 1993-94?

16. Assuming existing resources and a one-year moratorium from having to produce a market value roll, please detail what you think would be the advantages, from an administrative standpoint, of the one-year moratorium as contrasted with having to produce a market value roll immediately.

App. 10

17. Assuming the change in ownership statutes are invalidated, would you nonetheless continue to maintain base-year records?

___Yes

___No

18. Assuming the new construction statutes are invalidated, would you be able to nonetheless continue to track new construction activity as a separate element of your total roll value?

___Yes

___No

- (a) Do you have that capability now?

___Yes

___No

19. Many counties have probably been unable to maintain the detailed property and building records needed for a quality mass appraisal program. Describe the current state of your property characteristics records.

___Acceptable

___Fair

___Out-of-date

20. If the quality of your current records is less than acceptable, please estimate how long it would take to raise those records to a level of quality that would facilitate a reliable mass appraisal program, assuming adequate resources (see question 4 above):

___years

App. 11

21. Please indicate below whether you utilize or have available computer-assisted appraisal techniques (e.g., sales ratio programs, multiple regression programs, neighborhood trending programs):

	Use		Available	
Sales ratio	___yes	___no	___yes	___no
Multiple regression	___yes	___no	___yes	___no
Neighborhood trending	___yes	___no	___yes	___no
Others (please identify)	_____			

22. For each of the broad property types indicated below, identify the primary method you think you would use, for the first market roll, to adjust your base-year value assessments to market value (e.g., regression analysis, neighborhood trending, inflation trending, field appraisals)?

___Residential

___Commercial

___Industrial

___Agricultural

23. A commonly-suggested method for producing an equalized roll for 1992-93 is to trend base-year values to current value (in effect, apply market indexing instead of the 2-percent-per-year factor). For example, assume a property has a 1975 base-year value and had new construction for 1982.

	Base Year Value	Prop. 13 Trend	Prop. 13 Value (1992)	Market Trend ¹	Market Value (1992)
1975	\$10,000	1.3864	\$13,864	3.10	\$ 31,000
1982	\$50,000	1.2070	\$60,350	2.05	\$102,500
			\$74,214		\$133,500

¹ The "Market Trend" numbers are for illustration purposes only.

App. 12

24. Assume the court and/or the Legislature requires you to adjust all base-year values to market value, and the above method is specifically identified as one acceptable method for producing the first equalized roll.

(a) If the "Market Trend" factors were provided to you, how long would it take your existing staff² to make these adjustments and produce an "equalized" roll on this basis?

___ weeks

(b) If the above method is to be used but you are required to produce the market factors for your own county, estimate the time needed to produce the factors and the equalized roll.

___ weeks: county-wide factors

___ weeks: separate factors for land and improvements

___ weeks: separate property type factors (e.g., residential, commercial, industrial, agricultural.)

25. Prior to Proposition 13, the Board calculated statistical measures of the quality of each county's assessment roll. The "median ratio" (MR) is the ratio of total assessed value to market value. Assuming that you would utilize the methods identified in question 22 above, please estimate for each of the property

App. 13

types below the level of the "median ratio" for both the 1992-93 and 1993-94 rolls:

1992-93	1993-94	
___	___	Residential
___	___	Commercial
___	___	Industrial
___	___	Agricultural
___	___	Overall

26. Assume for purposes of this question that a quality assessment roll would yield a median ratio of at least 90% with a coefficient of dispersion no greater than 16% for medium and large size counties or 20% for small counties. Under this assumed, admittedly arbitrary standard, please estimate how long it would take you to produce, by property type, a quality assessment roll. Assume staffing levels contemplated in question 4 above.

___ years Residential
 ___ years Commercial
 ___ years Industrial
 ___ years Agricultural
 ___ years Overall

27. What existing programs could be eliminated in a conversion from Proposition 13 system to a market value system?

28. Assume the Supreme Court invalidates the Proposition 13 assessment system but provides no specific direction to the state as to how or when an equalized system should be reinstituted. In your view, what

² Since such computations would not involve appraisal judgment, clerical and other non-certified staff could perform much of this work.

App. 14

are the most important changes to law (statutes and/or constitutional provisions) you would suggest to the Legislature? What are the most important changes (survey program, technical assistance, rules, or other) you would suggest to the State Board of Equalization? Here are examples of topics that may be of concern to you.

- ☐ First lien date to be equalized.
- ☐ Supplemental assessments.
- ☐ If 1992 is to be equalized, date to produce preliminary roll, date to produce tax roll, date to file assessment appeal, date taxes delinquent.
- ☐ Temporary moratorium on class-action appeals and lawsuits with respect to assessor's implementation of equalized roll.
- ☐ Legislative and/or SBE-sanctioned methods for producing first equalized roll (e.g. factor base year values by market factor).
- ☐ SBE survey program.
- ☐ SBE technical support.
- ☐ Intracounty and intercounty equalization.
- ☐ SBE authority to require Board of Supervisors to provide adequate funding for assessors.
- ☐ Uniform minimum electronic data base requirements. (Uniform data base available to SBE and Legislature).
- ☐ SBE to provide multiple regression and other computer-oriented technical services.
- ☐ Restore Revenue and Taxation Code section 405.6 (cyclical appraisal requirement).

App. 15

- ☐ Phase-in of major assessed value increases.
- ☐ R&TC section 110 and Rule 2, presumption that sale price equals value.
- ☐ Increase Homeowners' Exemption.
- ☐ Subvention of Homeowners' Exemption
- ☐ Revenue effects (e.g., neutrality concept)

Budget

29. Do you foresee additional funds coming from your county general fund?
 - ☐ Yes
 - ☐ No
30. Do you foresee reduced funds from your county general fund?
 - ☐ Yes
 - ☐ No
31. Do you anticipate additional funds available for technological assistance?
 - ☐ Yes
 - ☐ No
32. Do you anticipate any savings in your budget due to cutting out programs needed for Proposition 13 implementation?
 - ☐ Yes Please describe _____
 - ☐ No

Assessor's Comments

33. You may have ideas and comments that go beyond the scope of the questionnaire. Please use as many additional pages as you need to make your comments.

[illegible]

Person to contact regarding this questionnaire:

Name_____

Telephone_____

For more information, contact the publisher at info@wiley.com.

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No. 90-1912

Supreme Court, U.S.
FILED

JAN 31 1992

OFFICE OF THE CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,
Petitioner,

v.

KENNETH HAHN, in his capacity as
Tax Assessor for Los Angeles County,
and the COUNTY OF LOS ANGELES,
Respondents.

On Writ Of Certiorari to the
Court of Appeal of the State of California

BRIEF OF THE CALIFORNIA TAXPAYERS' ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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No. 90-1912

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STEPHANIE NORDLINGER,
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and the COUNTY OF LOS ANGELES,
*Respondents.*On Writ Of Certiorari to the
Court of Appeal of the State of CaliforniaBRIEF OF THE CALIFORNIA TAXPAYERS'
ASSOCIATION AS *AMICUS CURIAE* IN
SUPPORT OF RESPONDENTSSTATEMENT OF INTEREST AND
SUMMARY OF ARGUMENT

I.

Statement of Interest.

The California Taxpayers' Association ("Cal-Tax") is a nonpartisan, California nonprofit corporation formed in 1926 and operated continuously since that time to serve its members and the citizens of California by protecting taxpayers from unnecessary and unwarranted taxes and financial burdens and by promoting efficient quality governmental services. Cal-Tax currently represents nearly 900 corporate and individual members and approximately

30 local organizations by serving as a taxpayers' clearinghouse, a tax policy research institute and an advocate for taxpayer interests in the legislative, executive and judicial arenas. Cal-Tax is the only statewide association in California with the exclusive mission of protecting the interests of taxpayers and promoting efficient government. Its staff of advocates attempts to influence legislation, government policy and administrative decisions of concern to all California taxpayers. Its research staff studies complex economic issues with emphasis on those relating to public revenue and expenditures.

Cal-Tax is regarded as an authoritative voice by legislatures, governmental leaders, media and others seeking accurate information about taxes and public spending in California. Since the adoption of Article XIII A of the California Constitution (herein referred to as "Proposition 13") by the voters of California in 1978, Cal-Tax has constantly studied the law and its effects on taxpayers and governmental spending in California. Therefore, Cal-Tax is knowledgeable and well-versed in the substantive issues affecting California taxpayers in this matter. As a result of its studies regarding Proposition 13, Cal-Tax has concluded that the provisions of Proposition 13 are good for the State of California and its taxpayers. Cal-Tax believes that the preservation of the acquisition value method of assessment adopted by Proposition 13 is necessary to preserve the fiscal integrity of California government and that the method represents sound public policy. Cal-Tax thus joins with Respondents in requesting that this Court uphold the provisions of Section 2(a) of Proposition 13.¹

¹This *amicus* brief is filed with the consent of Petitioner and Respondents. Letters of consent will be concurrently lodged with the Clerk of the Court.

II.

Summary of Argument.

Proposition 13 was adopted by California voters by initiative in 1978, when the local per capita property tax in California ranked fourth in the United States.² At that time, California's property tax system required that all property be assessed based upon its current market value.³ In 1977, property taxes provided 40% of local revenues.⁴ Calls for property tax reform were prevalent in California during the 1970's, increased by the rapidly escalating real estate market beginning around 1974 and 1975.⁵ A number of property tax reforms were proposed

²Koch, *The 800-Pound Gorilla We Know*, Los Angeles Lawyer 27, 30 (January, 1992) (hereinafter cited as "Koch").

³Cal. Const. art. XIII, § 1(a). Proposition 13 added Article XIII A to the California Constitution. Section 2(a) of Article XIII A redefined value for assessment purposes as the 1975-76 roll value "or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment." In fact, prior to Proposition 13, California assessors used a cyclical reassessment program. Cal. Rev. & Tax. Code § 405.5 (West 1987); 1976 Cal. Stat. ch. 1046. Former Section 405.6 of the Revenue & Taxation Code required no more than a five-year cycle. See Cal. Assembly Rev. & Tax. Comm., *Implementation of Proposition 13, Volume 1, Property Tax Assessment 1* (October 29, 1979).

⁴*Report of the Senate Commission on Property Tax Equity and Revenue* 17 (1991) (hereinafter cited as "Senate Commission Report").

⁵California Assembly Rev. & Tax. Comm., *Report of the Task Force on Property Tax Administration* 9 (January 22, 1979) (hereinafter cited as "Task Force Report"). The Task Force was formed following adoption of Proposition 13 to study existing statutes in light of Proposition 13 and to make recommendations as to appropriate law changes. Its members included county assessors, county tax counsels,

both by initiative and by the California Legislature, the final effort coming in 1977 when the Legislature rejected Senate Bill 154, the subject of a lengthy and controversial conference.⁶

Proposition 13 was qualified for the ballot in 1978 by Howard Jarvis and Paul Gann. A competing proposal by the Legislature on the same ballot promised a 30% reduction in taxes. Probably aided in part by the release of new assessments just prior to the election showing large increases in assessed value for many taxpayers, the electorate rejected the Legislature's proposal and overwhelmingly adopted Proposition 13. The stated purpose of the proposition was to make property taxes "fair, equal and within the ability of the taxpayer to pay."⁷

Immediately following its adoption, Proposition 13 was challenged in the California Supreme Court and upheld. *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal.3d 208, 583 P.2d 1281, 149 Cal.Rptr. 239 (1978). With respect to an Equal Protection attack on the provisions of Section 2(a), establishing an "acquisition value" approach to property taxation, the California Supreme Court found as follows:

"This 'acquisition value' approach to taxation finds reasonable support in a theory that the annual taxes which a property owner must pay should bear some rational relationship to the original cost of the property, rather than relate to an unforeseen, perhaps

private tax attorneys, State Board of Equalization staff, legislative staff, administrative staff and representatives of bankers, title companies, retailers and taxpayer associations.

⁶See *Senate Commission Report* at 23; Koeh at 30-31.

⁷See *Task Force Report* at 137 (containing portions of the June 1978 Ballot Materials relating to Proposition 13).

unduly inflated, current value. Not only does an acquisition value system enable each property owner to estimate with some assurance his future tax liability, but also the system may operate on a fairer basis than a current value approach. For example, a taxpayer who acquired his property for \$40,000 in 1975 henceforth will be assessed on the basis of that cost (assuming it represented the then fair market value). This result is fair and equitable in that his future taxes may be said reasonably to reflect the price he was originally willing and able to pay for his property, rather than an inflated value fixed, after acquisition, in part on the basis of sales to third parties over which sales he can exercise no control." *Id.* at 235, 583 P.2d at 1293, 239 Cal.Rptr. at 251.

In so holding, the court relied upon the previous decisions of this Court permitting wide flexibility to states in enforcement and interpretation of their tax laws and recognizing that such laws would withstand an Equal Protection challenge if classifications in the system were founded upon a reasonable distinction, or difference in state policy, not in conflict with the Federal Constitution. *Id.* at 234, 583 P.2d at 1293, 239 Cal.Rptr. at 251 (quoting *Kahn v. Shevin*, 416 U.S. 351 (1974)).

In the more than 13 years since the adoption of Proposition 13, its provisions have survived numerous legislative and initiative modifications and attempted modifications, administrative interpretations and dozens of cases.⁸ The attack in the instant case is based primarily on this Court's holding in *Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County, West Virginia*,

⁸Ancel, *Is California's Property Valuation System Constitutional?*, 1 J. of Multistate Tax. 73 (1991).

488 U.S. 336 (1989). The decision in *Allegheny Pittsburgh*, however, does not require, or indeed suggest, that the "acquisition value" provisions of Proposition 13 are invalid, since the reasonable and valid public policies first recognized by the California Supreme Court after the adoption of Proposition 13 effectively rebut any Equal Protection challenge. Amicus believes that the policies of relating tax burden to cost of property (an indication of ability to pay) and adding predictability to the property tax system, together with the additional policy of providing stability to property tax revenues, are valid, sound and reasonable, and that, therefore, the Constitutional challenge of Petitioner must fail.

ARGUMENT

I.

Proposition 13 is Based on Sound and Reasonable Policies and thus Does Not Violate the Equal Protection Clause.

The challenge to Proposition 13 before this Court rests upon a fundamental argument that the system creates unequal treatment of similarly situated taxpayers and therefore results in a denial of Equal Protection. What Proposition 13 actually does, however, is create classes of taxpayers based upon the acquisition date of property, and prescribe taxation based upon the value of the property as of that date. Thus, rather than a current market value system, which is the basis of most property tax systems in the United States, California has chosen to use an "acquisition value" system. The issue, then, is whether that system, and the classifications it creates, violates the Equal Protection Clause of the Fourteenth Amendment.

A. California And Other States Must Be Given Great Leeway In Formulating Tax Policy.

It has long been recognized that states have wide discretion in formulating tax policy, and that a state may create classifications for tax purposes provided the classifications are not arbitrary and capricious and are based upon a reasonable policy distinction. *Allied Stores of Ohio v. Bowers*, 358 U.S. 522, 526 (1959). Classifications "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). Thus, the Equal Protection limitation on a state's ability to fashion its tax laws does not "prevent variety in methods of taxation, or discretion in the selection of such, or classification for purposes of taxation of either properties, businesses, trades, callings, or occupations." *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 572 (1910). Furthermore, "[i]f the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law." *Id.* at 573.

Under the rational basis test, which has "weathered nearly a century of Supreme Court adjudication," *Kahn v. Shevin*, 416 U.S. 351, 355-356 (1974), the acquisition value method under Proposition 13 must be upheld. There are at least three sound policy reasons for adopting an acquisition value system rather than a current market value system. Two of these reasons were clearly recognized in the decision of the California Supreme Court in *Amador Valley*. The concern of the voters in adopting Proposition 13 was that the *ad valorem* system in place at the time, a system to which Petitioners presumably would have California return, was completely failing. In spite of

numerous attempts, a meaningful legislative reform of the system did not occur. Homeowners were literally being taxed out of their homes. It is not surprising, then, that the system overwhelmingly approved in 1978 was one which attempted to curb the compounding inflationary effects of rapidly escalating property prices in the 1970's.⁹

B. Proposition 13 Properly Ties Tax Burden To Cost And Adds Predictability To The Property Tax System.

Through the limitations provided by Section 2(a), California achieved two goals. First, a home purchaser could know with some certainty the magnitude of his tax burden for the future, for so long as he owned that property. Secondly, the limitation directly tied the amount of taxes to be collected to the price paid by that particular taxpayer, thus linking tax burden with the amount the taxpayer was originally willing and able to pay for his property. These provisions removed the fear that future taxes would be controlled by an inflated value, representing unrealized "paper gains," and based on activity in the real estate market and other economic factors over which the taxpayer had no control. Although the system is one of classifications, each property owner being in a class with each other property purchasers on that day, it is not discriminatory. There is no discrimination since each property owner is assessed and taxed in accordance with the same formula, that is, "on an acquisition value basis predicated on the owner's free and voluntary acts of purchase." *Amador Valley Joint Union High School Dis-*

⁹From 1973-74 to 1977-78, assessed values grew at a rate of 12.5 percent per year. The median price of a California home increased from \$31,530 in 1973 to \$62,430 in 1977. *Senate Commission Report* at 23.

trict v. State Board of Equalization, 22 Cal.3d 208, 235, 583 P.2d 1281, 1293, 22 Cal.Rptr. 239, 251 (1978). That such a system may result in some perceived unfairness through the taxation of identical properties at different amounts is Constitutionally insignificant, since the test for Constitutional purposes is whether a rational basis exists for the differentiation.

A home purchaser in California knows that his share of property taxes will be directly and continuously related to the value of the property at the time of acquisition until he disposes of the property. The value of the property is presumed to be the price paid.¹⁰ It is certainly reasonable to assume that the price paid is an indication of the property owner's ability to pay. The section 2(a) classification system thus achieves the result sought by Californians — protection against runaway property taxes based upon unrealized gain in property values. It clearly meets the Constitutional standard under the Equal Protection Clause that the challenged state action rationally further a legitimate state purpose or interest. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 55 (1973). Therefore, an Equal Protection challenge must fail.

C. Proposition 13 Achieves The Additional Purpose Of Providing A Stable Tax Base.

A third and equally important policy served by an acquisition value system is the stability and fiscal integrity the system provides to local government. That purpose was recognized by the California Court of Appeal in *R.H. Macy & Co. v. Contra Costa County*, 226 Cal.App.3d 352, 276 Cal.Rptr. 530 (1990), *cert. granted*, 111 S.Ct.

¹⁰Cal. Rev. & Tax Code § 110(b) (West 1987).

2256, *cert. dismissed*, 111 S.Ct. 2923 (1991). While the other public purposes advanced by Proposition 13 may have been served by a different system as proposed by Petitioner, it is improbable that a different system would have provided a stable, growing tax base like that under an acquisition value system.

Since the adoption of Proposition 13, property tax revenues have grown at a relatively steady growth rate, averaging approximately 10.5% compounded annually from 1978-1979 to 1988-1989.¹¹ The acquisition value system contains much less of the volatility of the *ad valorem* system. A study developed by Amicus from reports published by the State Board of Equalization¹² and reproduced here as Appendix A, reveals that the property tax under the old system in California was 2.9 times more volatile than the system under Proposition 13. The California income tax system is 5.8 times more volatile.

When Proposition 13 was adopted, it was feared that the system would undermine concepts of fair taxation by shifting the burden away from business and onto homeowners. That has not occurred.¹³ Further, there has apparently been no dramatic decrease in the numbers of properties transferred (and thus reassessed) after Proposition 13.¹⁴ Properties with 1975 value bases have de-

¹¹See Koch at 30.

¹²See California State Board of Equalization, *Annual Reports*, 1958-59 through 1989-90.

¹³*Senate Commission Report* at 36.

¹⁴K. Hahn, Los Angeles County Assessor, *1991-1992 Roll Release* 18 (July 29, 1991). The number of annual transfers in Los Angeles County increased steadily from 255,800 in 1983-84 to 432,700 in 1988-89, but has declined in 1990-91 to 365,600, presumably because of a weak real estate market.

clined to approximately one-third of all properties.¹⁵ As one commentator has so aptly stated, "the acquisition value assessment structure of Proposition 13 provides a sturdy floor to support continued growth and property tax revenues."¹⁶

D. The Adoption of Proposition 13 Reflected California Voters' Rejection of An *Ad Valorem* System.

A basic fallacy in Petitioner's reasoning is the assumption that the *ad valorem* system based on current market values is the perfect system by which all other systems must be measured. In fact, the experience in California with a current market value system prior to Proposition 13 does not support that assumption. An *ad valorem* system is by its nature arbitrary since its basis is an annual value judgment. Thus, the stated goal of annual current market value assessment is seldom achieved, and, in California, was certainly not the practice.¹⁷ Reports of the California State Board of Equalization for the years

¹⁵*Id.* at 16. In Los Angeles County in 1991, approximately 33.89% of single family residences retained a 1975 base year value, compared to 33.0% of residential income properties and 36.1% of commercial and industrial properties.

¹⁶Koch at 30. Local governments have found new discretionary taxes and fees to replace lost revenues. The taxes and fees are also not based on a current market value system. *Cal-Tax Research Bulletin* (October 1991).

¹⁷In 1966, the Assembly Committee on Revenue and Taxation announced: "Based on the latest available data from the State Board of Equalization, pure equalization of all assessments is more a myth than a reality. . . . The assessor is faced with an impossible task of completely and accurately appraising all property in his jurisdiction." Assembly Committee on Revenue and Taxation, *Problems of Property Tax Administration in California* 20 (December 1966) (hereinafter cited as "*Assembly Committee Report*").

just prior to the adoption of Proposition 13 show widely disparate deviations from current value by California assessors.¹⁸ Assessors were generally unable to cope with reassessments caused by rapid inflation. The result was periods of undervaluation followed by substantial catch-up assessments, which resulted in large tax increases for property owners.¹⁹ The trust of Californians in an *ad valorem* system had already been eroded by a series of scandals in assessor's offices in California.²⁰ Faced with this experience under an *ad valorem* system, it is of little wonder that California property owners adopted the certainty and stability of an acquisition value system.

The acquisition value system may not be perfect and in some instances may not be entirely fair. Perfection and complete fairness, however, are not Constitutional requirements. The acquisition value system of Proposition 13 serves reasonable public purposes and is founded on a rational basis. Therefore, it is clearly valid under the Equal Protection Clause of the Fourteenth Amendment.

II.

The Decision of this Court in *Allegheny Pittsburgh* Does Not Support the Contention that Proposition 13 Violates the Equal Protection Clause.

The decision of this Court in *Allegheny Pittsburgh Coal Co. v. County Commissioner of Webster County, West Virginia*, 488 U.S. 336 (1989), determined that the assessor of Webster County could not arbitrarily adopt a system of

¹⁸California State Board of Equalization, *Annual Reports*, 1975-76 through 1977-78.

¹⁹*Task Force Report* at 197.

²⁰*See Assembly Committee Report* at 8-9.

assessing properties on the basis of their acquisition price where the West Virginia Constitution required that all property be assessed on the basis of its current market value. There was clearly no public policy advanced by the Webster County system since it was completely contrary to state law. No rational basis argument was, or indeed could have been, offered. The taxpayer, then, was clearly discriminated against when compared with the treatment afforded homeowners of comparable properties that had not recently been sold. The problem, however, was that the taxpayer's properties were valued at the time in question in accordance with state law. The issue thus raised was whether, under those circumstances, the taxpayer had the right to have its assessments reduced to a level comparable to those of similar properties, or whether it was relegated to having the assessments of other taxpayers raised to the proper level. The Supreme Court of Appeals of West Virginia, although apparently not disputing the inequality in assessments, chose the latter remedy, thereby leaving the taxpayer in a position of having no effective remedy.

This Court, in accordance with a long line of cases offering similar relief,²¹ held that the taxpayer "may not be remitted by the State to the remedy of seeking to have the assessment of the undervalued property raised." *Allegheny Pittsburgh*, 488 U.S. at 346. Thus, the taxpayer whose assessment, although conforming with state law, is discriminatory when compared to the assessments of comparable taxpayers rendered in violation of state law, will have an effective remedy and will not be left to the

²¹*See, e.g., Hillsborough v. Cromwell*, 326 U.S. 620 (1946); *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Sunday Lake Iron Co. v. Wakefield*, 247 U.S. 350 (1918).

unreasonable task of attempting to have the offending assessments raised to their proper level.

The circumstances presented in *Allegheny Pittsburgh* are clearly different than those presented by California's acquisition value system. Petitioner's assessment in this matter was made in accordance with California law. There is no indication that the assessments of the other properties to which Petitioner refers in an effort to show unequal treatment were made other than in accordance with California law. That law, as discussed above, has a rational basis. The practices of the assessor in Webster County were not made in accordance with state law, and therefore served no public policy. West Virginia had not intended to classify taxpayers for any sound or reasonable purposes. Under West Virginia law, there was only one class of taxpayer. Each taxpayer's property was required to be assessed at current market value. Since the challenged method resulted in unequal and discriminatory treatment among taxpayers in the same class, the practice was defective on Equal Protection grounds. California, on the other hand, has clearly created a system of classifications to further sound public policies. Petitioners have presented no evidence of unequal or discriminatory treatment among taxpayers of the same class. Consequently, there is no infirmity in the California system on Equal Protection grounds.

All property tax systems need not be measured against one based upon current market values. That is clearly not a Constitutional mandate. Equal Protection limitations do not "prevent variety in methods of taxation or discretion in the selection of subjects, or classification for purposes of taxation of either properties, business, trades, callings, or occupations." *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 572 (1910). Indeed, this Court

has never attempted to prescribe a "single constitutionally mandated method of taxation." *Goldberg v. Sweet*, 488 U.S. 252, 261 (1989), quoting *Container Corp. of America v. Franchise Tax Board*, 463 U.S. 159, 171 (1983).

Absolute equality in an *ad valorem* system would be achieved only if property were revalued each year based on the latest market developments, an almost hopeless possibility. "Seasonal attainment of rough equality" in an *ad valorem* system might occur through a cyclical reassessment system that requires reassessment to statutory standards within reasonable timeframes. "Seasonal attainment of rough equality" in an acquisition value system, however, can only be achieved within the classifications established by law; i.e., in California, by comparison of assessments of properties acquired on the same date. There is no indication that Petitioner has been discriminated against vis-a-vis other and similarly situated taxpayers *in her class*.

CONCLUSION

California's acquisition value system under Proposition 13 was adopted to achieve valid public policy goals. Therefore, the system is valid under any legitimate Equal Protection analysis. To hold otherwise would require a finding by this Court that all property taxes must be based upon a current market value system. Such a finding would require interference in matters of state taxation to a degree never before hinted. Amicus believes the public policies advanced by Proposition 13 are vital to the continued fiscal integrity and growth of California. Therefore, Amicus joins with Respondent in requesting that the judgment of the California Court of Appeal be affirmed.

Respectfully submitted,

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APPENDIX A

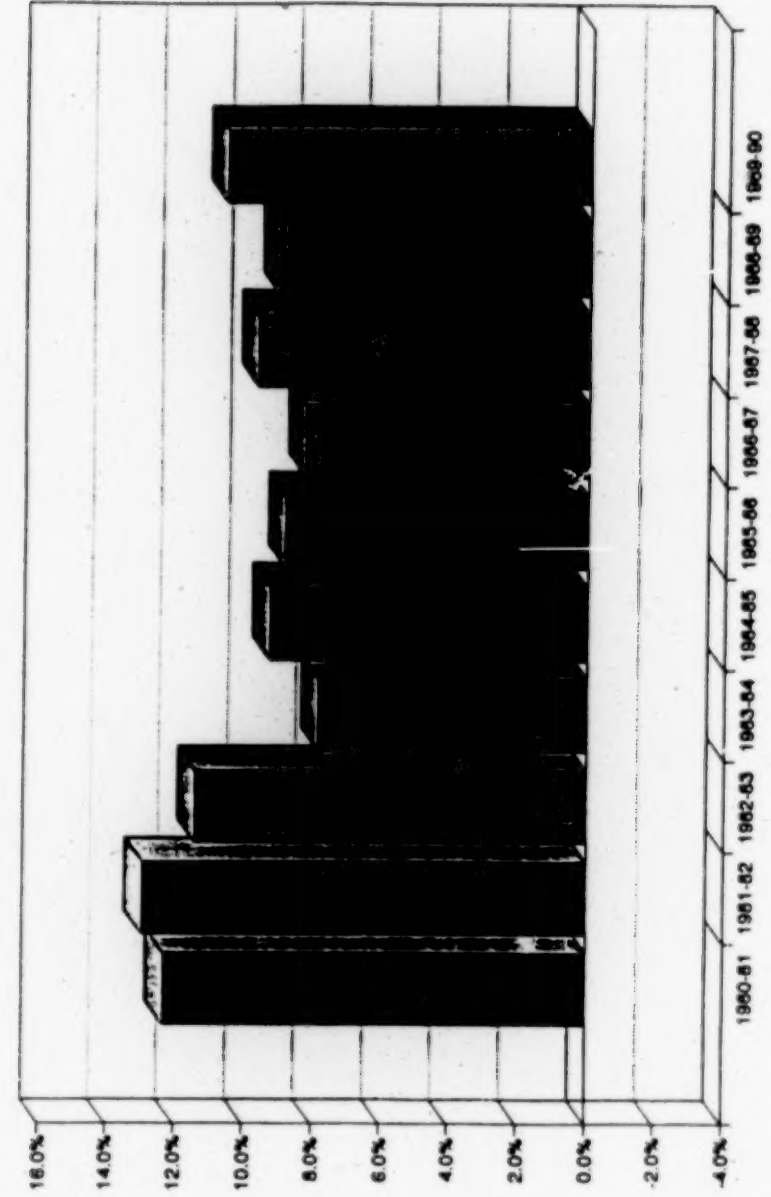
APPENDIX

Property and Income Taxes
(Dollars in Thousands)

Year	Property Tax Levies	% Change	Income Tax Collections	% Change
1958-59	1,807,932	—	—	—
1959-60	1,990,497	10.1%	—	—
1960-61	2,195,588	10.3%	—	—
1961-62	2,414,617	10.0%	—	—
1962-63	2,606,131	7.9%	—	—
1963-64	2,805,152	7.6%	—	—
1964-65	3,057,579	9.0%	—	—
1965-66	3,367,736	10.1%	—	—
1966-67	3,760,608	11.7%	—	—
1967-68	4,110,742	9.3%	—	—
1968-69	4,569,986	11.2%	952,487	15.7%
1969-70	4,935,475	8.0%	1,101,691	4.6%
1970-71	5,721,672	15.9%	1,152,053	4.6%
1971-72	6,372,331	11.4%	1,264,383	9.8%
1972-73	6,819,077	7.0%	1,785,618	41.2%
1973-74	6,647,769	-2.5%	1,884,058	5.5%
1974-75	7,383,411	11.1%	1,829,385	-2.9%
1975-76	8,304,125	12.5%	2,579,676	41.0%
1976-77	9,376,391	12.9%	3,086,611	19.7%
1977-78	10,276,725	9.6%	3,761,356	21.9%
1978-79	4,909,760	-52.2%	4,667,887	24.1%
1979-80	5,661,081	15.3%	4,761,571	2.0%
1980-81	6,360,276	12.4%	6,506,015	36.6%
1981-82	7,185,005	13.0%	6,628,694	1.9%
1982-83	8,007,037	11.4%	7,483,007	12.9%
1983-84	8,634,771	7.8%	7,701,099	2.9%
1984-85	9,437,483	9.3%	9,290,279	20.6%
1985-86	10,274,050	8.9%	10,807,706	16.3%
1986-87	11,125,581	8.3%	11,413,040	5.6%
1987-88	12,203,844	9.7%	13,924,527	22.0%
1988-89	13,307,539	9.0%	12,950,346	-7.0%
1989-90	14,720,218	10.6%	15,886,361	22.7%
			16,903,654	6.4%

Property Tax Std Deviation	Income Tax Std Deviation	68-69 to 77-78	80-81 to 89-90	
0.0472	0.0165	2.9 times more volatile before Prop 13		
	0.0950	5.8 times more volatile than current property tax		

Property Tax Revenue Growth Yearly % Changes After Prop 13



JAN 31 1992

OFFICE OF THE CLERK

In The
Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Tax Assessor
for Los Angeles County and the
COUNTY OF LOS ANGELES,

Respondents.

On Writ Of Certiorari
To The Court Of Appeal
Of The State Of California

BRIEF OF GOVERNOR PETE WILSON,
UNITED STATES SENATOR JOHN SEYMOUR,
UNITED STATES REPRESENTATIVES TOM
CAMPBELL, CHRISTOPHER COX, ROBERT K.
DORNAN, RON PACKARD AND DANA
ROHRBACHER, THE CALIFORNIA STATE SENATE
REPUBLICAN CAUCUS, THE CALIFORNIA STATE
ASSEMBLY REPUBLICAN CAUCUS, STATE
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NOLAN FRIZZELLE, BEV HANSEN, PAUL V.
HORCHER, DAVID G. KELLEY, BILL LANCASTER,
STAN STATHAM AND CATHIE WRIGHT, AND
FORMER STATE ASSEMBLYMAN CHARLES BADER
AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Are the property-by-property tax limitations and the acquisition value tax classification established in Article XIII A reasonably related to the legislative purposes of providing all property owners with certain, predictable and limited property taxes during the period of their ownership, so that there is a rational basis for the distinctions employed in Article XIII A?

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NORDINGLER v. HAHN, et al.

Pursuant to Supreme Court Rule 37, Governor Pete Wilson, United States Senator John Seymour, United States Representatives Tom Campbell, Christopher Cox, Robert K. Dornan, Ron Packard and Dana Rohrabacher, the California State Senate Republican Caucus, the California State Assembly Republican Caucus, State Assembly Members Bill Jones, Dean Andal, Paula L. Boland, Chris Chandler, B.T. Collins, Gerald N. Felando, Bill Filante, Nolan Frizzelle, Bev Hansen, Paul V. Horcher, David G. Kelley, Bill Lancaster, Stan Statham and Cathie Wright, and former State Assemblyman Charles Bader submit this brief, amici curiae, in support of respondents in No. 90-1912, having obtained the written consent of both petitioner and respondents to file this brief. The written consent has been filed with the Clerk.

INTEREST OF AMICI CURIAE

Amici are state and federal officeholders elected by the people of California who have a direct interest in this matter because, if Article XIII A is held unconstitutional, amici will be required to remedy the resulting legal deficiencies. Governor Wilson will have a legislative responsibility to veto or sign into law any alternative property tax system designed by the California Legislature.

Amici believe they can offer the Court a unique perspective on Proposition 13 because it was the product of direct lawmaking through the initiative process. Amici believe Proposition 13 continues to enjoy the overwhelming support of the vast majority of Californians and that retention of Proposition 13 is in the best interest of California and all its citizens.

Amici have a direct interest in the outcome of this matter. If this Court invalidates Proposition 13, amici will have to redesign the state's system of public finance and attempt to ameliorate the resulting economic dislocation including considering alternatives to the current California property tax system.

SUMMARY OF ARGUMENT

When enacted in June of 1978, Proposition 13 envisioned a comprehensive system of property tax reform. The proponents of Proposition 13 believed that the prior system of taxation was unduly oppressive and burdensome. They argued that a property tax based on acquisition value would provide California's home owners with stability and predictability in property taxation. Proposition 13 is rooted in these rational and sensible considerations.

This brief illuminates the history of property taxes and property tax reform in California prior to the enactment of Proposition 13. This history illustrates that the public policy goals constituting the rational basis for Article XIII A were reasonably related to the provisions

adopted and in no way involved the "Politically Expedient Attempt to Raise Revenue by Shifting the Overwhelming Burden of Property Tax Revenue Increases to Newcomers" as alleged by petitioner. Pet.Br. at 37.

This Court has respected interpretation of the California Constitution by California state courts. The California court of appeal held that Proposition 13 withstood petitioner's Equal Protection challenge and that *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, W. Va.*, 488 U.S. 336 (1989) did not deprive Proposition 13 of its constitutional viability. Proposition 13's purposes have been carefully scrutinized by the state's judiciary and been upheld as reasonably and rationally related to the legislative policies driving the reforms.

Petitioner's logic would have this Court establish that all property taxation must be based on current fair market value to be constitutional. Such an interpretation is without legal precedent and would establish new and far reaching limitations on the States' power to tax. In fact, in addition to sustaining many different bases for classification, this Court has previously sustained as constitutional the very classification distinctions drawn by Article XIII A.

The cases decided by this Court clearly establish that a state may tax property on a basis other than its current fair market value. By overturning Proposition 13, this Court would be subsuming the legislative function and constitutional powers which the Tenth Amendment reserves to the State of California and to its people.

ARGUMENT

I. ARTICLE XIII A CARRIES OUT A COMPREHENSIVE TAX LIMITATION SCHEME IMPORTANT TO CALIFORNIA AND IS RATIONALLY RELATED TO ITS PURPOSES.

A. Proposition 13 is a Comprehensive Scheme of Property Taxation.

Proposition 13, popularly known as the "Tax Limitation Initiative," was adopted by California's electorate on June 6, 1978. The initiative, described as "the most significant fiscal act of the people of California in modern times,"¹ added Article XIII A to the California Constitution. No other constitutional initiative measure has caused so much change in California's governmental powers and programs.²

Petitioner challenges only Proposition 13's property assessment provisions. Pet.Br. at 2 n.1. However, the Equal Protection claim at bar cannot be properly evaluated unless it is viewed in context. Examination of Proposition 13's overall impact on California's property tax system is necessary to assess petitioner's Equal Protection challenge.

¹ California Commission on Government Reform, *Final Report* 1 (Jan. 1979).

² Henke & Woodiief, *The Effect of Proposition 13 Court Decisions on California Local Government Revenue Sources*, 22 U.S.F. L.Rev. 251, 253 (1988). See also Even, *Of Castles and Kings: A Perspective for Property Tax Reform*, 50 Mont.L.Rev. 243, 258 (1989) ("California's Proposition 13 stands out as the archetype of tax limitation measures nationwide.").

The California Supreme Court has stated that Proposition 13:

[C]onsists of four major elements, a real property *tax rate* limitation (§ 1), a real property *assessment* limitation (§ 2), a restriction on *state* taxes (§ 3), and a restriction on *local* taxes (§ 4). Although petitioners insist that these four features constitute separate *subjects*, we find that each of them is reasonably interrelated and interdependent, forming an interlocking "package" deemed necessary by the initiative's framers to assure effective real property tax relief.

Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization, 583 P.2d 1281, 1290 (Cal. 1978) (emphasis in original).³

Section 1 of Proposition 13 defined the property tax rate limit as 1 percent of the full "cash value" of real property. Cal.Const. art. XIII A, § 1 (1978, amended 1986).

Section 2 rolled back the *assessed valuations* to the levels prevailing in 1975-76 and limited increases in property tax valuations to 2 percent per year until the property is "purchased, newly constructed, or a change in ownership" occurs after the 1975 assessment. Cal.Const. art. XIII A, § 2 (1978, amended 1990).

³ Proposition 13 had two remaining sections. Section 5 determined Proposition 13's effective date and section 6 contained a severability clause which declared that if any section was held to be invalid or unconstitutional, the remaining sections would remain in full force. Cal. Const. art. XIII A, §§ 5-6 (1978).

Section 3 requires that any changes in *state* taxes, whether by increased rates or change in methods of computation, be approved by two-thirds of all members elected to both houses of the Legislature. However, new *ad valorem* taxes on real properties are prohibited.⁴ Cal.Const. art. XIII A, § 3 (1978).

- Section 4 requires a two-thirds vote in a special election before *local* governmental entities can impose special taxes. New *ad valorem* taxes on real property are again prohibited. Cal.Const. art. XIII A, § 4 (1978).

Sections 1 and 2 are twin pedestals of Proposition 13's effective property tax relief. Limiting the tax rate alone would not have remedied the plight of property owners because the burden on homeowners before Proposition 13 was caused by increased *assessments*, not rising property tax *rates*. A rollback of assessments and caps on future increases in assessed valuation was also necessary because without section 2, local governments could still raise larger amounts of revenue from property taxes.⁵

⁴ Proposition 13's definition of *ad valorem* tax has been articulated by the California Supreme Court as "any source of revenue derived from applying a property tax rate to the assessed value of property." *Heckendorn v. City of San Marino*, 723 P.2d 64, 67 (Cal. 1986) (quoting Cal.Rev. & Tax Code § 2202 (1978)).

⁵ "Since the total real property tax is a function of both rate and assessment, sections 1 and 2 unite to assure that *both* variables in the property tax equation are subject to control." *Amador Valley*, 583 P.2d at 1290-1291 (emphasis in original).

Sections 3 and 4 prevented circumvention of the fiscal constraints imposed by property tax limits. Section 3 assured that the Legislature would be restricted in its ability to raise state taxes. Section 4 completed the "package" by restricting the ability of local governments to raise local taxes, guaranteeing that property tax relief would not be offset by an increase in other local taxes.

In weighing Proposition 13 under the California Constitution's single subject requirement, the California Supreme Court succinctly summarized the interrelated nature of the initiative's provisions:

[S]ince any tax savings resulting from the operation of sections 1 and 2 could be withdrawn or depleted by additional or increased state or local levies of other than property taxes, sections 3 and 4 combine to place restrictions upon the imposition of such taxes. . . . [B]oth sections [3 and 4], in combination with sections 1 and 2, are reasonably germane, and functionally related, to the general subject of property tax relief.

Amador Valley, 583 P.2d at 1291.

California's voters thus approved Proposition 13 anticipating property tax relief from local government without offsetting tax increases from other levels of government.

B. Proposition 13's Historical Underpinnings Establish A Rational Motivation for California's Property Tax Reform.

The United States Constitution invalidates only governmental choices which are "clearly wrong, a display of

arbitrary power, not an exercise of judgment." *Mathews v. DeCastro*, 429 U.S. 181, 185 (1976). The nature of the problem addressed by Proposition 13, and the collective judgment made by the electorate about the best method of tax reform, can best be understood by reviewing the history of California's property tax revolt.

In the summer of 1965, the *San Francisco Chronicle* published a series of newspaper articles describing the corruption of property tax assessors throughout the state. The articles described the escapades of elected assessors who had received "campaign contributions" to "review and adjust" assessments on business property. Levy, *On Understanding Proposition 13*, 56 Pub.Int. 66, 68 (1979).

Responding to the scandal, the California Legislature enacted the Petris-Knox bill in 1967. Cal.Rev.& Tax. Code § 401 (1967, amended 1980). The legislation required county assessors to reassess, within a three year period, all property at 25 percent of market value and required frequent reassessments to keep the ratio intact. Adjustment to a uniform 25 percent assessment ratio brought about a rapid increase in homeowner assessments.

Individuals quickly perceived that a shift in the property tax burden was occurring away from commercial and residential property onto single-family residential property. As time progressed and the price of single-family homes continued growing faster than the values of other properties, the general conclusion that homeowners were bearing an increasing percentage of total property taxes was supported by substantial statistics. Shapiro, Puryear & Ross, *Tax and Expenditure Limitation in Retrospect and in Prospect*, 32 Nat'l Tax J. 1 (Supp. June 1979).

Opposition to this swift escalation of the property tax fueled a series of tax reform initiatives. In response to increased homeowner's tax bills, Proposition 9, the "Watson Initiative," appeared on the November, 1968 ballot. It proposed a five-year plan to eliminate the use of property tax revenues to fund "people-related" services, such as education and welfare.⁶ Proposition 9 would have limited property tax rates to one percent of market value. The ballot measure was defeated by a margin of two-to-one because it failed to guarantee a reduction in the overall level of government spending. Levy, *supra*, at 70.

In June of 1970, Proposition 8 provided Californians the opportunity to approve another tax-shift measure. Proposition 8 called for an expansion of the state homeowner exemption and increased the state funding for local welfare programs and education. However, Proposition 8 did not require local governments to maintain or reduce tax levies. Because it lacked an explicit protection against increased property taxes, the initiative received only 28 percent of the vote. *Id.* at 71.

⁶ The California Legislature, reacting to the campaign for Proposition 9, offered its own plan for property tax relief. The Legislature passed and placed on the ballot California's first homeowners property tax exemption which provided that the first \$750 of assessed value of an owner-occupied home would be exempt from property taxation. Fifty-four percent of the voters supported the necessary constitutional amendment required to implement the Legislature's tax exemption. Act approved September 23, 1968, ch. 1, 1969 Cal.Stat. 7-8 (codified as amended at Cal.Rev.& Tax. Code § 218 (1987)). Levy, *supra*, at 70.

In 1972, the second "Watson Initiative" appeared on the November ballot as Proposition 14. Like Proposition 9 in 1968, Proposition 14 called for a limit on local property taxes and for a shift to state financing for most educational and welfare programs. Proposition 14 specified increases of the sales tax, cigarette tax, liquor tax, and the tax on corporate income. Proponents claimed these revenue increases would fund the expansion of state spending. Sensing a threat of higher state taxes, voters defeated Proposition 14 by a margin of three to one.⁷

Proposition 1 was offered in 1973 as a tax reform alternative which would explicitly limit state spending. Even though sponsored by Governor Ronald Reagan, Proposition 1 proved vulnerable to the arguments of opponents that any limit on state spending would force local governments to fund necessary services through the property tax. Proposition 1 received only 44 percent of the vote. Levy, *supra*, at 73.

While efforts at tax reform failed at the ballot box and in Sacramento, residential property values during the mid-1970's were skyrocketing. Between 1973 and 1977, housing prices in San Francisco and Los Angeles were

⁷ *Id.* at 72. In a reaction to the public's escalating tax reform fever, the California Legislature belatedly enacted an alternative to Proposition 14. The Property Tax Relief Act of 1972 raised the homeowner's exemption to \$1,750, introduced a modest income-tax credit for renters, placed limits on city and county tax rates (later repealed in 1973), and placed limits on school-district expenditure levels. Smith, *Constitutional Reform Gone Awry: The Apportionment of Property Taxes in California After Proposition 13*, 23 Loy.L.A.L.Rev. 829, 837 nn. 56-59 (1990).

increasing at the horrific rate of 14 to 15 percent per year, a rate far outpacing the rest of the country. *Id.* at 73.

Yet California's property tax system prior to Proposition 13 kept assessed values and market values in a fixed ratio.⁸ Many homeowners, especially in large urban areas, found their property tax bill increasing from 50 to 100 percent in a three to four year period. By May of 1978, the

⁸ According to one commentator, California's pre-Proposition 13 assessment practices raised the alarming specter of housing costs well above what families expected when they had purchased their home:

Consider a family in Los Angeles that made \$18,000 in 1973. At that time a typical home was financed at a 7 3/4-percent rate of interest for 25 years. Institutions required a 20-percent down payment and used a 25-percent rule of thumb: The sum of the monthly housing payment and property-tax payment should be less than 25 percent of gross monthly income. The combined Los Angeles tax rates for city, county, and Los Angeles Unified School District stood at about \$12.25 per \$100 of assessed valuation (and the first \$1,750 of assessed valuation was tax exempt under [the Property Tax Relief Act of 1972]). Taking all these factors into account, a bank would have judged the family capable of purchasing a \$47,500 home. The annual property-tax bill would have been slightly over \$1,000 per year. By 1976, typical reassessments would have increased the family's annual property-tax bill by \$730. By 1977, their tax bill would have risen by an additional \$400 per year, a nominal tax increase of over 100 percent in four years!

Levy, *supra*, at 73-74.

Los Angeles County Assessor released fiscal year 1978-1979 assessments showing a 17.5 percent increase in residential values with some homes rising as much as 100 percent over their previous assessment levels. Lefcoe & Allison, *The Legal Aspects of Proposition 13: The Amador Valley Case*, 53 S.Cal.L.Rev. 173, 178 (1979). During the fastest period of price growth in California homes, from roughly 1973 to 1977, many homeowners received tax bills which were actually *triple* the previous year's bill. Oakland, *Proposition 13 - Genesis and Consequences*, 32 Nat'l Tax J. 387, 392 (Supp. June 1979).

The lingering crisis addressed by Proposition 13 was that Californians had already been consistently paying higher taxes relative to the rest of the United States. Only three states - Alaska, Massachusetts, and New Jersey - had higher per capita *property tax* burdens than California in the year before Proposition 13 was enacted. U.S. Bureau of the Census, *Government Finances in 1976-77*, at 64, table 25 (1978). Further, the relative burden of *all* state and local taxes placed California third in the nation exceeded only by New York and Alaska. The personal income of California residents lagged behind the increases of state and local tax collections both in California and the balance of the nation by a wide margin. Lefcoe & Allison, *supra*, at 176.

The property tax revolt which swept Article XIII A into the California Constitution was a direct response to years of patient waiting for meaningful tax reform.

During the 1960's, per capita property tax collections in California nearly doubled. The average annual rise of 7 percent materially outpaced

the growth rate of the State's economy, as measured by per capita income (about 4.8 percent a year). Hence, total property tax revenue went up from \$49 to \$63 per \$1000 of resident personal income during the decade; for fiscal 1970-71 that figure reached \$67 per \$1000. On a per capita basis, California paid the largest property tax bill in the nation, \$296.

U.S. Advisory Comm. on Intergovernmental Relations, *The Property Tax in a Changing Environment: Selected State Studies* 57 (1974). Lefcoe & Allison, *supra*, at 176 n.12.

By the spring of 1977, California's taxation dynamo had generated a state budget surplus of \$2.4 billion. Given a golden opportunity to respond to the public's clamoring for tax relief, the California Legislature dropped the ball. After disagreeing on a blueprint for property tax relief, the Legislature adjourned the 1977 session without passing a tax reform bill. Levy, *supra*, at 81-83.

Soon after the collapse of the 1977 legislative session, Howard Jarvis and Paul Gann began circulating signature petitions for what was to become Proposition 13 on the June, 1988 statewide ballot. Directing a volunteer organization on a budget of merely \$28,000, Jarvis and Gann garnered over 1.2 million signatures (only 500,000 were needed to qualify the initiative for the ballot) in an astonishing one month's time. Lefcoe & Allison, *supra*, at 174.

On June 6, 1988, Proposition 13 was approved by a wide margin. The initiative received 64.8 percent of the

vote and carried fifty-five of the state's fifty eight counties which accounted for 95 percent of the state's population. California Secretary of State, *Statement of Vote* (Primary Election, June 6, 1978). By taking matters into their own hands, California's voters addressed a fiscal problem the California Legislature had proved incapable of solving.⁹

II. THIS COURT HAS CONSISTENTLY DEFERRED TO INTERPRETATION OF THE CALIFORNIA CONSTITUTION BY CALIFORNIA STATE COURTS.

The people of California have reserved the right to enact legislation through initiative. Cal.Const. art. IV, § 1 (1966). Certainly, the "voters may no more violate the Constitution by enacting a ballot measure than a legislative body may do so by enacting legislation." *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 295 (1981). But, notwithstanding petitioner's attack on California's initiative process, this Court has exhibited significant deference to state judicial

⁹ Smith, *supra*, at 832. Republican State Senator John V. Briggs told prospective voters that Proposition 13 should be supported because "The Legislature will not act to reduce your property taxes. As a Senator and Legislator for 11 years, I, like you, have been totally frustrated with the Legislature's failure to enact a meaningful property tax relief and reform bill." California Secretary of State, *California Voter's Pamphlet* 58 (June 6, 1978) (emphasis in original).

interpretation of law enacted by the people of California.¹⁰

In *Reitman v. Mulkey*, 387 U.S. 369 (1967), this Court considered a voter-approved amendment to the California Constitution. At issue was Proposition 14, enacted in 1964.¹¹ The California Supreme Court decided the initiative was unconstitutional because it gave state sanction to private racial discrimination. This Court deferred to the California Supreme Court acknowledging that court's superior "knowledge of the facts and circumstances concerning the passage and potential impact" of the initiative and the "milieu in which that provision would operate." *Reitman*, 387 U.S. at 378. The factors approved in *Reitman* are pertinent here:

We affirm the judgments of the California Supreme Court. We first turn to the opinion of

¹⁰ This Court has passed upon the constitutionality of California's popularly-enacted legislation on numerous occasions. See, e.g., *California v. Ramos*, 463 U.S. 992 (1983) (upholding the "Briggs Initiative," enacted in 1978); *Crawford v. Board of Education*, 458 U.S. 527 (1982); *Richardson v. Ramirez*, 418 U.S. 24 (1974) (upholding Proposition 7, enacted in 1972); *James v. Valtierra*, 402 U.S. 137 (1971) (upholding a voter-approved amendment to the California Constitution); and *Reitman v. Mulkey*, 387 U.S. 369 (1967).

¹¹ Proposition 14 provided in pertinent part that "Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses." *Reitman*, 387 U.S. at 371.

that court in *Reitman*, which quite properly undertook to examine the constitutionality of [Proposition 14] in terms of its "immediate objective," its "ultimate effect" and its "historical context and the conditions existing prior to its enactment." Judgments such as these we have frequently undertaken ourselves. *But here the California Supreme Court has addressed itself to these matters and we should give careful consideration to its views because they concern the purpose, scope, and operative effect of a provision of the California Constitution.*

Reitman, 387 U.S. at 373-374 (citations omitted, emphasis supplied).

Crawford v. Board of Education, 458 U.S. 547 (1982) was an Equal Protection challenge to Proposition 1, an amendment to the California Constitution enacted in November of 1979.¹² In upholding the amendment prohibiting state courts from ordering mandatory pupil assignment or transportation unless a federal court would have the same authority under federal case law,¹³ this Court deferred to both the electorate and the decision of the state court:

In this case the Proposition was approved by an overwhelming majority of the electorate. . . .

¹² *Crawford* reached this Court in a similar procedural posture as the instant case. Review there was of a decision by the California Court of Appeal, *Crawford*, 170 Cal.Rptr. 495 (Cal.Ct.App. 1980), after denial of review by the California Supreme Court.

¹³ Cal.Const. art. I, § 7(a) (1979).

The purposes of the Proposition are stated in its text and are legitimate, nondiscriminatory objectives. In these circumstances, we will not dispute the judgment of the Court of Appeal or impugn the motives of the State's electorate.

Crawford, 458 U.S. at 545 (footnotes omitted).

Crawford's respect for the California Supreme Court's exegesis of its own state constitution illustrates this Court's traditional deference to the interpretation of state law by a state's highest court. *North Carolina v. Butler*, 441 U.S. 369, 376 n.7 (1979); *Ward v. Illinois*, 431 U.S. 767, 772 (1977).

The court of appeal below distinguished *Allegheny Pittsburgh* and held it was bound by the Equal Protection analysis of the California Supreme Court in *Amador Valley*. *Nordlinger v. Hahn*, 275 Cal.Rptr. 684 (Cal.Ct.App. 1990). Acceptance of the state taxation policies embodied in the California Constitution, as justified by California state courts, is warranted and appropriate here under this Court's judicial precedents.

III. PETITIONER ASSUMES FACTS NOT IN EVIDENCE AND MISCHARACTERIZES PROPOSITION 13'S OPERATION.

Petitioner assumes facts not in evidence and mischaracterizes the legal issues in *Allegheny Pittsburgh* by presuming in her second question that there is "no possibility of ever seasonably attaining rough equality in tax treatment." Under Article XIII A, by reason of the fact that purchasers subsequent to petitioner in most instances have a higher assessed value relative to market

value than petitioner, petitioner has already achieved a partial equalization with all other properties in the aggregate and will, in fact, achieve "a rough equality in tax treatment" over time with all other properties of similar market value. As time progresses, petitioner's property will gain relative advantage over an increasing number of other properties changing ownership after her purchase until petitioner's property itself changes ownership, whereupon the cycle of equalization based on current market value will begin again.

Further, petitioner mischaracterizes Proposition 13's actual operation. Article XIII A's change of ownership provisions are unique and do not fit within the factual mold of those cases wherein discrimination *within a single class* has been characterized as the "welcome stranger" doctrine.¹⁴ From time to time properties of like current

¹⁴ Indeed, *Allegheny Pittsburgh's* "aberrational enforcement policies" – advanced by petitioners as the paradigm of Proposition 13's application – is remarkably similar to California's traditional *ad valorem* tax assessment scheme prior to the adoption of Proposition 13:

First, both Webster County and pre-Proposition 13 California utilized continuous reassessment cycles to adjust *all* property in the jurisdiction, whether or not the property had been recently sold. *Allegheny Pittsburgh*, 488 U.S. at 338; *Levy, supra*, at 71.

Second, both systems assessed property within a fixed ratio of appraised value. Prior to Proposition 13, the Petris-Knox bill required California's county assessors to reassess all property at 25 percent of market value and to reassess regularly to maintain that ratio. *Levy, supra*, at 71. Webster County's assessor fixed the yearly assessments at 50 percent of appraised value. *Allegheny Pittsburgh*, 488 U.S. at 338.

(Continued on following page)

fair market value will be assessed at different values under an "acquisition value" system. However, the amount and degree of disparity "common" in California is not a matter of record in this case, and is unknown. Petitioner's study, which is not properly part of the record in this case, cannot be considered to prove anything "generally" or "commonly" and clearly cannot establish any specific amount of disparity in the future.

In contrast to California, all the "welcome stranger" cases involved a local property tax system where local government set the tax rate based on its budget and spread the commensurate property tax burden among properties based on assessed value. A "high" assessed value would, therefore, subsidize a "low" assessed value since assessed values were used to spread the predetermined property tax burden. However, Article XIII A limits the power of local government to tax by limiting assessed values. Assessed values are not used to *spread* the burden. Assessed values collectively *determine* the burden.

Under Proposition 13 no property "subsidizes" any other.

Equally without merit is petitioner's conclusion that, "These annual real tax cuts for long-time owners are

(Continued from previous page)

Finally, a single property owner in Webster County and pre-Proposition 13 California, fortunate enough to obtain an inflation-enhanced price for property, triggered an areawide adjustment based on "some perception of the general change in property values" by the local county assessor. *Id.* at 343.

subsidized entirely by new buyers who must pay an enormous percentage of the annual increases in overall property tax revenues," Pet.Br. at 8 (emphasis supplied). Petitioner also claims that newcomers "must bear a vastly disproportionate share of future tax revenue increases," Pet.Br. at 14, and that Proposition 13 "bestows its lowest effective tax rates on the community's wealthiest citizens." Pet.Br. at 7.

Petitioner's conclusions as to a subsidy of one group by another are premised on a very critical and invalid assumption – that somehow there would be a reduction in the taxes paid by so called "newcomers" if only Proposition 13 was eliminated and all property assessed on current market value.

However, pre-Proposition 13 property tax law is still in place and will become operative again if the provisions of Article XIII A which limit assessed value to acquisition value are invalidated. Cal.Const. art. XIII, §§ 1(a) and (b) (1974). All properties would be taxed on current fair market value but with no commensurate reduction in the rate of tax. The only beneficiary of eliminating Proposition 13 would be higher taxes overall and more revenue for local government. Neither short time nor long time property owners will benefit from overturning Proposition 13.

Petitioner's assumption that one group is subsidizing another is purely erroneous since Proposition 13 limits the amount of money local government may exact from the property tax. Any loosening or elimination of Proposition 13's limitations automatically increase the property

tax yield to local government. None of any tax increase will necessarily go to reduce any other taxpayer's tax. *Id.*

IV. THE POWER TO TAX OR CLASSIFY IS RESERVED TO THE STATES BY TENTH AMENDMENT.

The power of the States to effect significant social and economic policy through tax classifications is reserved to the States by the Tenth Amendment. This power is absolute except as abridged by the Constitution itself and federal law and treaties lawfully enacted pursuant to the Constitutional powers of the United States. *Buffington v. Day*, Mass. 1871, 78 U.S. 113, 124 (1870).

Reconciliation of the power of the States to tax under the Tenth Amendment with the word "equal" in equal protection under the Fourteenth Amendment has been the subject of numerous cases. The reconciliation of this conflict in semantics by this Court has been well stated by commentators:

[The United States Supreme Court] has resolved the contradictory demands of legislative specialization and constitutional generality by a doctrine of reasonable classification.

The essence of that doctrine can be stated with deceptive simplicity. The Constitution does not require that things different in fact be treated in law as though they were the same. But it does require, in its concern for equality, that those who are similarly situated be similarly treated. The measure of the reasonableness of a classification is the degree of its

success in treating similarly those similarly situated.

Tussman and tenBroek, *The Equal Protection of the Laws*, 37 Cal.L.Rev. 341, 344 (1949) (footnotes omitted).

V. STATES MAY TAX PROPERTY ON OTHER THAN FAIR MARKET VALUE.

A. Petitioner's Logic, Which Compels All Property Taxation to be Based On Only Fair Market Value, is Without Legal Support.

Petitioner states that the Equal Protection requirement is the "seasonable attainment of a rough equality in tax treatment of similarly situated property owners." Pet.Br. at 17. Petitioner offers disparities between properties based on current market values and implies that the only comparison as to what properties are "similarly situated" must be based on current fair market value. Petitioner's argument, therefore, is that the California property tax system must achieve equalization on current fair market value to satisfy Equal Protection.

On the one hand petitioner accepts predictability as a legitimate public policy goal justifying a tax classification. Pet.Br. at 36. Petitioner contends that California could have fixed everyone's value "as of the same year" to achieve predictability and still avoid constitutional infirmity. Pet.Br. at 36. On the other hand, petitioner concedes that properties have and will appreciate at different rates throughout California. Pet.Br. at 7, para. 2.

Based on petitioner's admissions, her alternative to achieve predictability fails under her own Equal Protection illogic. Both an acquisition value system and petitioner's "same year" system would, over time, create disparities in assessed values when compared to current market values. Such differences in appreciation, where all assessed values are fixed for all time "as of the same year" would create nearly as many disparities as are alleged to exist under the Proposition 13 system. As time passed and some properties appreciated much more than others (perhaps with some depreciating) petitioner's system would fail to meet her own test of "seasonable attainment of a rough equality in tax treatment of similarly situated property owners." In fact, the only system which would not fail under petitioner's test is one based on continuous reappraisal at current fair market value – a system that cannot accommodate the admittedly legitimate public policy goal of predictability.

Petitioner misunderstands the meaning of "similarly situated" taxpayers. Two identical 2500 square foot homes on identical sized lots in different locations are "similarly situated" in one very important respect, their size. Yet under a current fair market value system their property taxes may vary widely. It is not a denial of Equal Protection to tax these same sized homes differently because the law under which we determine whether properties are "similarly situated" establishes a comparison based on "current market value." Likewise, there are many taxes using "size" to distinguish the class. In many states, property tax on boats or vessels depends on size. In California and elsewhere literally hundreds of special

assessments for fire control districts, flood control districts, etc., are based on the parcel's square footage or its improvements irrespective of current market value. Clearly these are not all unconstitutional because they are not uniformly based on "current fair market value."

"Similarly situated" is a descriptor of the one similarity out of the many possible similarities singled out in law as the distinguishing comparative. "Seasonable attainment of rough equality" is merely equality based on the criteria of comparison established by state law, whether it be "current market value," "square footage" or "acquisition value." It is not unconstitutional to tax properties differently that are identical on one basis of comparison where they are treated the same on another basis. The "acquisition value" of a property is no less valid a basis of comparison than a property's current fair market value, or its size, or the use to which it is put, or the nature of the person or entity owning it. As set forth below, all these distinctions have been sustained by this Court.

Petitioner considers Proposition 13, which simply establishes a basis of comparison different than fair market value, as unfair. But that is a political judgment which is not equivalent to the legal conclusion that distinguishing properties for tax purposes based on "acquisition value" is a denial of Equal Protection.

No decision by this Court establishes the strict requirement petitioner seeks to impose. On the contrary, the power of the States to classify for tax purposes is very broad. This Court and lower federal courts have sanctioned numerous tax classifications based on any number

of distinctions.¹⁵ Also, this Court has sustained distinguishing individuals from corporations or partnerships with regard to the same property.¹⁶ Such distinctions have been held constitutional even though the entities being distinguished directly compete with one another.¹⁷

¹⁵ This Court and lower federal courts have sanctioned distinctions based on geography, *Weissinger v. Boswell*, 330 F.Supp. 615 (M.D. Ala. 1971); distinctions based on the nature or use to which property is put, such as differences in the operations of common carriers, *Dixie Ohio Express Co. v. State Rev. Comm'n*, 306 U.S. 72 (1939), *Aero Mayflower Transit Co. v. Board of R.R. Comm'rs*, 332 U.S. 495 (1947), *Bekins Van Lines v. Riley*, 280 U.S. 80 (1929); differences in what is being transported, *Alward v. Johnson*, 282 U.S. 509 (1931); differences in vehicle use and weight, *Coyne v. Prouty*, 289 U.S. 704 (1933); differences in what natural resource is being extracted or produced, *Lake Superior Consol. Iron Mines v. Lord*, 271 U.S. 577 (1926); differences in whether property is real property, tangible personal property or intangible property, *Klein v. Board of Tax Supervisors*, 282 U.S. 19 (1930); differences based on agricultural versus nonagricultural use, *Clark v. Kansas City*, 176 U.S. 114 (1900); differences in leased versus owned property, *Illinois Central Railroad Co. v. Minnesota*, 309 U.S. 157 (1940); differences in bank charters, *Union Bank & Trust Co. v. Phelps*, 288 U.S. 181 (1933), *Commercial Bank v. Chambers*, 182 U.S. 556 (1901); differences in the purposes for storing merchandise within a state, *Allied Stores v. Bowers*, 358 U.S. 522 (1959), and *Youngstown Sheet & Tube Co. v. Bowers*, 358 U.S. 534 (1959).

¹⁶ *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973); *Barrett v. Shapiro*, 411 U.S. 910 (1973); *Lawrence v. State Tax Comm.*, 286 U.S. 276 (1932); *White River Lumber Co. v. Arkansas*, 279 U.S. 692 (1929); *New York v. Barker*, 179 U.S. 279 (1900).

¹⁷ *Puget Sound Power & Light Co. v. Seattle*, 291 U.S. 619 (1934).

Additionally, disproportionate exactions of tax revenues from certain individuals that pay for programs that benefit other than those taxed have also been found not to offend the Equal Protection Clause.¹⁸

B. This Court Has Specifically Sustained A Property Tax Classification Based on Other Than Fair Market Value.

In *Bell's Gap Railroad Company v. Commonwealth of Pennsylvania*, 134 U.S. 232 (1890), Pennsylvania (similar to Article XIII A) levied an annual tax of three mills on each dollar of par or nominal value of corporate bonds and securities and also levied an annual tax of three mills on the fair market value of all other moneyed securities. *Id.* at 234. In that case, petitioners argued that this classification system violated the Equal Protection Clause because "the nominal value of the bonds is not their real value. . . ." *Id.* at 235-236.

The United States Supreme Court however concluded that Pennsylvania's law:

[D]oes not make any discrimination . . . which the State is not competent to make. All corporate securities are subject to the same regulation. . . . We think that we are safe in saying, that the Fourteenth Amendment was not intended to compel the State to adopt an iron rule of equal taxation. . . .

¹⁸ See, e.g., *Fox v. Standard Oil Co.*, 294 U.S. 87 (1935); and *Dane v. Jackson*, 256 U.S. 589 (1921).

With due regard to these considerations, we are clearly of opinion that the method of assessing the tax in question, on the face value of corporate securities in Pennsylvania, is not violative of the Fourteenth Amendment to the Constitution.

Bell's Gap, 134 U.S. at 237-238.

The "face value" versus "current market value" conflict of *Bell's Gap* is essentially the same conflict confronting this Court, between "acquisition value" and "current market value," in this case. From as early as *Bell's Gap* in 1890 to the present, nothing has occurred to change the deference shown by this Court to the States in permitting tax classifications.¹⁹ In 1974, more than 80 years after *Bell's Gap* and after many similar decisions in between, this Court stated, "A state tax law is not arbitrary although it 'discriminate[s] in favor of a certain class . . . if the discrimination is founded upon a reasonable distinction, or difference in state policy,' not in conflict with the Federal Constitution. *This principle has weathered nearly a century of Supreme Court adjudication. . . .*" *Kahn v. Shevin*, 416 U.S. 351, 355-356 (1974) (citation omitted, emphasis supplied).

¹⁹ It is clear that an acquisition value system was approved by the electorate. The non-partisan Legislative Analyst noted that Proposition 13's assessment provisions would be "set at the appraised (or market) value at the time of sale or construction." *California Voter's Pamphlet, supra*, at 57 (emphasis supplied). Further, the official title and summary prepared by the California Attorney General stated Proposition 13 "[p]rovides for reassessment after sale, transfer, or construction." *Id.* at 56.

VI. ALLEGHENY PITTSBURGH IS AN EQUAL PROTECTION "REMEDY" CASE NOT APPLICABLE TO ARTICLE XIII's "CLASSIFICATION" ISSUE.

There is no legal similarity between Article XIII's change of ownership provision and *Allegheny Pittsburgh*, relied upon heavily by petitioner. *Allegheny Pittsburgh* is best characterized as an Equal Protection *remedy* case. There the West Virginia Supreme Court of Appeals refused to redress an *intra*class discrimination and left the taxpayer to force up the low assessments of others to achieve state mandated equality.

Allegheny Pittsburgh involved a clear aberrational, intentional and systematic undervaluation of property within a single class by a state official in conflict with West Virginia's constitutionally mandated equality within that class. This distinction is made clear by this Court in the first sentence of its opinion: "The West Virginia Constitution guarantees to its citizens that, with certain exceptions, 'taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value. . . .'" W.Va. Const., Art. X, § 1." *Allegheny Pittsburgh*, 488 U.S. at 338 (emphasis supplied).

Further, petitioner mischaracterizes the decision. In *Allegheny Pittsburgh* this Court clearly did not hold that the West Virginia "classification scheme" violated "the Equal Protection Clause." Pet.Br. at 27 (emphasis supplied). The West Virginia fair market value "scheme" was and is constitutional. It was West Virginia's failure to grant a remedy for a violation of equalization required

under that "scheme" that prompted the decision in *Allegheny Pittsburgh*.²⁰

VII. PETITIONER'S ARGUMENT CONSTITUTES A PUBLIC POLICY OBJECTION RATHER THAN A CONSTITUTIONAL INFIRMITY.

Petitioner's argument, including her side-by-side property examples, and alleged statistics, simply rise to the level of a public policy objection and no higher. The legal essence of petitioner's case is that because two individuals share one element of commonality (they own

²⁰ This Court stated: "The Equal Protection Clause 'applies only to taxation which in fact bears unequally on persons or property of the same class.'" *Allegheny Pittsburgh*, 488 U.S. at 343 (quoting *Charleston Fed. Savings & Loan Assn. v. Alderson*, 324 U.S. 182, 190 (1945)). Further:

In each case, '[i]f the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of difference or policy, there is no denial of the equal protection of the law.'

But West Virginia has not drawn such a distinction. Its Constitution and laws provide that all property of the kind held by petitioners shall be taxed at a rate uniform throughout the State according to its estimated market value.

Allegheny Pittsburgh, 488 U.S. at 344-345 (quoting *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 573 (1910)). Finally, "We granted certiorari to decide whether these . . . assessments denied petitioners the equal protection of law and, if so, whether petitioners could constitutionally be limited to the remedy of seeking to raise the assessments of others." *Allegheny Pittsburgh*, 488 U.S. at 342.

properties of equal value), no tax classification may be made which distinguishes individuals on the basis of another important common element (acquisition price). If petitioner's logic is a constitutional Equal Protection requirement, then very few tax classifications can survive.²¹

It is well established that, regardless of the equitable appeal or lack thereof of petitioner's tax policy entreaties, this Court should not subsume the function of the California Legislature and interpose the policy judgment of petitioner for that of California's voters as to what is "fair and proper" tax classification policy. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 40-41 (1973). See also *Regan v. Taxation with Representation of Washington*, 461 U.S. 540 (1983); *Madden v. Kentucky*, 309 U.S. 83 (1940).

CONCLUSION

For the foregoing reasons, amici curiae urge this Court to affirm the decision of the Court of Appeal of the State of California, Second Appellate District.

Dated: January 31, 1992

Respectfully submitted,

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²¹ To the contrary, see the cases cited *supra* note 15.

MOTION FILED
JAN 31 1992

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No. 90-1912

IN THE
Supreme Court of the United States

October Term, 1991

STEPHANIE NORDLINGER,

Petitioner,

v.

KENNETH HAHN, in his capacity as Assessor
for the County of Los Angeles
and the COUNTY OF LOS ANGELES,

Respondents.

On Writ of Certiorari to the
Court of Appeal of the State of California

**MOTION FOR PERMISSION TO FILE BRIEF AS
AMICI CURIAE AND BRIEF OF THE UNITED STATES
JUSTICE FOUNDATION AND JAMES V. LACY AS
AMICI CURIAE IN SUPPORT OF RESPONDENTS**

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In The

Supreme Court of the United States

OCTOBER TERM, 1991

STEPHANIE NORDLINGER,

v.

Petitioner.

KENNETH HAHN, ET AL.,

Respondents.

MOTION OF THE UNITED STATES JUSTICE FOUNDATION
AND JAMES V. LACY FOR LEAVE TO FILE BRIEF
AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

The United States Justice Foundation (the "USJF") and James V. Lacy (collectively "Amici") move pursuant to Rule 37 of the Rules of this Court for leave to file the accompanying brief as *amici curiae* in support of respondents. Amici sought written consent from petitioner and respondents; respondents consented, but petitioner refused. Amici filed respondents' written consent with the Clerk of the Court.

Amici include Mr. Lacy and the USJF. Mr. Lacy was a close associate and advisor to Howard Jarvis, the co-author of Proposition 13, during the campaign to adopt the initiative. The USJF, a non-profit California corporation, was founded in 1979 by supporters and a former associate of Howard Jarvis, and is dedicated to the preservation of property, civil and human rights. The interests of movants as *amici curiae* are more fully described in the accompanying brief (pp.3-4).

Amici have devoted much of their professional efforts to promote the principles and policies of Proposition 13. Amici's active involvement in the evolution of Proposition 13, enable them to provide this Court with an important perspective. In its brief, Amici address the general question of the equal protection challenge to Proposition 13, and specifically discuss the constitutional implications of the similarity of Proposition 13's formula for property taxation and the formula used by the Internal Revenue Service.

In addition, Amici discuss the importance of maintaining the independence of state tax systems and the likely consequences of this Court's interference with Proposition 13.

Amici respectfully request leave to file this brief as *amici curiae* in support of respondents.

Respectfully submitted,

Dated: January 31, 1992

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No. 90-1910

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**BRIEF *AMICI CURIAE* OF THE UNITED STATES JUSTICE
FOUNDATION AND JAMES V. LACY
IN-SUPPORT OF RESPONDENTS**

THE UNITED STATES JUSTICE FOUNDATION AND
JAMES V. LACY SUBMIT HERewith THEIR BRIEF *AMICI
CURIAE* IN SUPPORT OF RESPONDENTS.

I. INTERESTS OF THE *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, the United States Justice Foundation, a California corporation (the "USJF") and James V. Lacy, an individual, submit the following brief *amici curiae* in support of respondents Kenneth Hahn and the County of Los Angeles.

The USJF is a non-profit, tax-exempt California corporation, dedicated to the preservation of property, civil and human rights. The USJF was founded by supporters and a former associate of Howard Jarvis, the co-author of Proposition 13. The USJF has been active in defending tax limitation proposals in California and throughout the United States. With the assistance of volunteer lawyers, the USJF regularly represents individuals and classes on a *pro bono publico* basis, not only redress individual acts of injustice, but also to promote the fairness of governmental conduct and important public policy concerns.

James V. Lacy is a native of California who has dedicated his working career to reducing the size of government. Mr. Lacy served as a principal aide to Howard Jarvis during the Proposition 13 campaign where he helped qualify and pass the initiative. Mr. Lacy also provided legal advice during the implementation process for Proposition 13. He is in a position to bear witness as to the issues and policy concerns that were discussed during the campaign to adopt and implement Proposition 13. After passage of Proposition 13, Mr. Lacy helped found the USJF to insure, among other important purposes, that the spirit and intent of Proposition 13 would be defended and maintained. Most recently, Mr. Lacy served in the Bush Administration as Chief Counsel for Technology in the Department of Commerce.

II. SUMMARY OF THE ARGUMENT

In June, 1978, California voters amended their Constitution to include Article XIII A, commonly known as Proposition 13. Proposition 13 is a historic measure aimed at increasing governmental accountability and improving fiscal responsibility by altering the way property is taxed in California.

Before Proposition 13, property taxes were based on annual current market assessments and fluid tax rates which resulted in unpredictable fluctuations in taxes. Worse, property owners were taxed on the unrealized gains in the value of the property. Individuals often faced the choice of borrowing against their home to pay the property tax or selling their home. Because borrowing against a home is difficult for persons with fixed or low incomes, the pre-Proposition 13 tax system resulted in many people being taxed out of their homes.

As explained by the California Supreme Court in affirming its constitutionality, Proposition 13 "consists of four major elements: a real property *tax rate* limitation (§1), a real property *assessment* limitation (§2), a restriction on *state* taxes (§3), and a restriction on *local* taxes (§4)." *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 231 (1978) (emphasis in original). Each provision is "interrelated and interdependent, forming an interlocking 'package' . . . to assure real property tax relief." *Id.* Under Proposition 13, California property owners are no longer taxed on the unrealized gains of their property, and the

maximum rate of taxation is fixed. With Proposition 13, California discarded its former current-value tax system and enacted an acquisition value tax system in which the tax basis is the purchase price of the property instead of the annual current-value assessment.

This acquisition value tax system treats property like the Internal Revenue Service treats property. Pursuant to the Internal Revenue Code ("IRC"), the basis of a capital asset is the purchase price, and tax is imposed only when the asset is sold or "realized." See 26 U.S.C. §1001. Similarly, Proposition 13 uses the purchase price as its basis for taxation and allows for a 2% annual increase of the tax basis to insure that local governments have adequate and ever-increasing revenues. Additional revenues can be obtained with voter approval. Using this relatively fixed tax basis, the government then taxes property at a rate of 1% each year.

Proposition 13's formula has remained overwhelmingly popular with the electorate in California for the past 13 years. The instant case is a challenge by the same entities who opposed Howard Jarvis, Paul Gann and the California voters in 1978. This time, Proposition 13's opponents are cloaking their opposition to the policies and fiscal consequences of Proposition 13 in the garb of a constitutional challenge. This litigation is an attempt to gain in the courtroom what these groups have consistently lost at the ballot box.

While intelligent people may disagree as to the most productive manner of taxation, such issues should be resolved by the electorate and the popularly-elected legislature, not an independent federal judiciary. Petitioner and supporting *amici* have equal access to the initiative process and could repeal Proposition 13, but the initiative process is precisely what petitioner and supporting *amici* object to.

Traditionally, this Court has deferred to states the ability to tax their own people. While California's tax policy may differ from other states, it is this freedom of the states to adopt different state policies that is at the core of our federal system of government. In *McCulloch v. Maryland*, 17 U.S. 316 (4 Wheat 1819), Chief Justice John Marshall wrote:

[T]he power of taxing the people and their property is essential to the very existence of government, and may be

legitimately exercised on the objects to which it is applicable, to the utmost extent to which the government may chuse [sic] to carry it. The only security against the abuse of this power, is found in the structure of the government itself. *Id.* at 428.

If this Court strikes down Proposition 13, it strikes at the heart of the federal system. If we are to maintain our federal system, states, with the consent of their people, must be allowed to make independent decisions concerning taxation.

To overcome the strong presumption of deference to states in tax matters, petitioner must show a constitutional violation, not merely a disparate impact from a tax system which is neither arbitrary nor capricious. If this Court treats policy arguments as constitutional violations, it will open the floodgates of litigation to continued challenges concerning state tax issues and this Court will have to reallocate scarce federal judicial resources toward the creation of an omnibus property tax review court. If the Court chooses to move in this direction, it should hire a slew of assessors and surveyors, purchase a gaggle of green shade visors and sign up for some frequent flier programs, because if Proposition 13 is unconstitutional because of difference in assessment levels, then so too is every other state property or sales tax and this Court will become the final arbitrator of each state and locality's tax policy.

III. PROPOSITION 13 DOES NOT VIOLATE THE CONSTITUTION'S EQUAL PROTECTION CLAUSE.

Petitioner claims Proposition 13's method of property tax assessment violates the equal protection clause of the Constitution.¹ Petitioner asserts that Proposition 13 merely grafted a "welcome stranger" component onto the former current-value scheme of property taxation and therefore discriminates against people who move to California. Petitioner's Brief at 2, 14-16. Specifically, petitioner alleges that newcomers to California do not receive the same tax treatment as people who already own property because the

¹ Petitioner does not challenge the 1% tax rate cap or any other feature of Proposition 13. Petitioner's Brief on the Merits ("Petitioner's Brief") at 2, fn.1.

newcomer's baseline tax assessment year is more recent than the baseline year of those already owning property.² Petitioner argues that this results in an unconstitutional denial of equal protection.

This argument, however, entirely lacks merit. Proposition 13 treats all similarly situated taxpayers the same — regardless of whether they are recent arrivals to the state or natives buying a new residence. Nothing in the equal protection clause or related Court cases requires state property taxes to produce equal results; rather, there must be "rough equality in tax treatment of similarly situated property owners." *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County, West Virginia*, 488 U.S. 396, 343 (citing *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 526-27 (1988)). The California Supreme Court found such "rough equality" to exist when it considered the constitutionality of Proposition 13: "[Proposition 13] introduces a roughly comparable tax system with respect to real property, whereby the taxes one pays are closely related to the acquisition value of the property." *Amador Valley*, 22 Cal. 3d at 236.

Not only does Proposition 13 create "rough equality," but any resulting disparity is a consequence of the state's attempt to avoid the grossly unfair annual fluctuations and unrealistic burdens placed on taxpayers under the prior system. Before Proposition 13, California taxed property owners on the current-value of their property, even though they could not realize the ever-increasing value of their property until it was sold. Property owners who could not afford to sell their property and realize their gain were perennially taxed on "assets" they would never possess. It was precisely this unfair treatment of similarly-situated property owners that in part prompted the California voters to adopt Proposition 13.

A. PROPOSITION 13 DOES NOT CREATE A SUSPECT CLASSIFICATION.

Petitioner's initial claim is that Proposition 13 improperly creates and unfairly taxes a class of taxpayers, namely recent arrivals to the state. This is not true. Proposition 13 simply does not

² For example, if two identical parcels of land were bought two years apart in a rapidly appreciating market, the person who bought first would likely have a lower property tax assessment than the person who bought two years later.

create a suspect classification. Under Proposition 13, tax assessments are tied to the property, not to the individual. Pursuant to this acquisition value tax system, long-time residents who purchase land this year are treated in exactly the same manner as recent arrivals who purchase property this year.

Petitioner's argument relies in part on *Allegheny Pittsburgh*, which held that under a state scheme of property taxation, property owners must be treated in a similar manner. 488 U.S. at 343. Petitioner asserts that the Webster County taxation scheme struck down in *Allegheny Pittsburgh* is virtually identical to Proposition 13 and should likewise be found unconstitutional. Petitioner's Brief at 11. However, this Court did not find that the property tax scheme in West Virginia created suspect classifications. *Id.* at 345. Rather, the Court found that the West Virginia tax system violated the equal protection clause because the county assessor violated the West Virginia constitution and the assessors's own administrative regulations by applying the tax classifications in an arbitrary manner. *Id.* Significantly, this Court accepted as constitutional the underlying basis of an acquisition value tax system. *Id.* at 343.

In *Allegheny Pittsburgh* this Court held that the *administration* of the West Virginia tax system to be unconstitutional — not the *system* itself. This Court ruled against Webster County because the actions of a rogue assessor violated the West Virginia constitution. This Court cited violations of the state constitution and improper administrative practices which infringed upon the equal protection clause. 488 U.S. at 345. Nowhere in Petitioner's Brief, however, does she allege that any California official has acted arbitrarily, capriciously or in violation of Proposition 13's guidelines and rules in administering property taxation pursuant to Proposition 13.

Petitioner's second equal protection argument is that Proposition 13 creates an unconstitutional barrier to travel between states. In support, petitioner cites *Zobel v. Williams*, 457 U.S. 55 (1982), in which this Court arguably strengthened its test for evaluating equal protection claims. Even under *Zobel*, however, Proposition 13 survives the equal protection and barrier to travel challenges.

Zobel challenged the constitutionality of an Alaskan statutory scheme to distribute income, in varying amounts, based on the length of each citizen's residency. *Zobel*, 457 U.S. at 56. While

petitioner admits that property ownership is not equivalent to residency, she attempts to analogize the two. Petitioner's Brief at 40. This analogy is inappropriate. Property ownership is not closely linked to residency. Many long-time California residents will never purchase property, while recent arrivals to California often purchase property immediately. Every day long-time property owners sell their homes and purchase another, just as new arrivals do. *Zobel* was concerned with *permanent* classifications of people — a system that does not exist under Proposition 13. *Zobel*, 457 U.S. at 59. The classifications under Proposition 13 are fluid and are not aimed at any particular group of people. To the contrary, *any* individual, whether a resident or out-of-state arrival, who buys property is subject to the *same* tax treatment. Without permanent classifications, there is no equal protection violation.

Zobel's equal protection claim rested on the ground that Alaska's statute unfairly created a barrier to travel. Yet empirical data effectively demonstrates that Proposition 13 is not a barrier to travel. As a long-time California resident, petitioner must be aware of the population explosion that has occurred in the past 13 years.³ This enormous population growth certainly cuts against any claim that Proposition 13 has complicated migration to California. Moreover, to the extent that Proposition 13 discourages migration, its burden is shared by any long-time resident who similarly buys property. Unlike the petitioner in *Zobel*, long-time California residents and new arrivals to California are treated in exactly the same manner. Burdens and benefits are received equally by all similarly situated individuals.

B. ANY CLASSIFICATIONS UNDER PROPOSITION 13 ARE NOT ARBITRARY AND CAPRICIOUS AND ARE JUSTIFIED BY PROPOSITION 13'S RATIONAL AND VALID POLICY OBJECTIVES.

As noted above, this Court in both *Allied Stores* and *Allegheny Pittsburgh* held that a state has the power to impose and collect

³ In 1978, the population of California was 22,836,000 and by 1990, the population had grown to 29,976,000. *California Statistical Abstract*, 10 (1991).

taxes and that it *may* tax property at different rates. Although Proposition 13 does *not* create any suspect classifications because it treats all similarly situated people alike, it does create different classes for purposes of tax collection for different people in different situations which are *unrelated to length of residency*. However, this Court consistently holds that states may create different classes for tax collecting purposes as long as the classifications are neither "capricious nor arbitrary and rest under some reasonable consideration of difference and policy." *Allegheny Pittsburgh*, 488 U.S. at 344, 359 (citing *Brown-Forman Co. v. Kentucky*, 217 U.S. 563, 573, (1910)).⁴ To find Proposition 13 unconstitutional, petitioner must show that any classification method under Proposition 13 is both arbitrary and capricious and that there are no underlying policy reasons for the transition from the former current-value tax system to an acquisition value method of taxation.⁵

In 1991, this Court ruled on two cases regarding a state's ability to create classifications. In *Leathers v. Medlock*, 111 S. Ct. 1438 (1991), this Court upheld Arkansas' ability to impose a sales tax on cable television, but not on printed matter. The Court wrote: "[i]nherent in the power to tax is the power to discriminate in

⁴ Petitioner lists numerous "unfair" elements of the Proposition 13 system and she rests her "constitutional" challenges on these charges. The most prominent charge is the supposed unfairness between those individuals who have owned their property since 1978 and more recent purchasers. Petitioner asserts that certain subsequent amendments to Proposition 13 have created a "caste," individuals who have owned their homes since 1978 and will be able to take full advantage of Proposition 13. Petitioner's Brief at 21. Although there is still a substantial number of these individuals, petitioner's own study demonstrates that this number is declining rapidly and will soon represent an insignificant portion of the property tax-paying public. Petitioner's Brief at 19. Joint Appendix at 46.

⁵ Such classification is no different than that which may occur under sales taxation. The California Supreme Court observed in *Amador Valley*: "the fact that two taxpayers may pay different taxes on substantially identical property is not wholly novel to our general taxation scheme. For example, the computation of a sales tax on two identical items of property may vary substantially, depending upon the exact sales price and availability of a discount." *Amador Valley*, 22 Cal. 3d at 235-36.

taxation. 'Legislatures have especially broad latitude in creating classifications and distinctions in tax statutes. *Id.* at 506.'" (citing *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 547 (1983)).

In *Gregory v. Ashcroft*, 111 S. Ct. 2395 (1991), the Court recognized the constitutional presumption which favors the state in its ability to make classifications. In *Gregory*, this Court upheld the Missouri constitution's age qualification for its policy-making officials, stating that a petitioner has the burden to disprove the validity of the underlying policy reasons for a particular classification. The Court held that "[a] state 'does not violate the equal protection clause merely because the classification made by its laws are imperfect.' [citations] In an equal protection case of this type . . . those challenging the judgment [of the people] must convince the court that the . . . facts on which the classification is apparently based could not reasonably be conceived to be true by the decision-maker." *Id.* at 2407-08 (citing *Vance v. Bradley*, 440 U.S. 93, 111 (1979)).

This presumption, combined with the historical deference shown toward state tax regimes in general, creates a high standard for petitioner to meet. As will be demonstrated below, petitioner fails to show that Proposition 13 classifications are arbitrary or capricious or that the underlying policy reasons for Proposition 13 are unreasonable or invalid.

1. Proposition 13 eliminates any hint of arbitrary or capricious actions by the State.

Under Proposition 13's acquisition value tax system, property purchasers are now in a position to more accurately determine their property tax assessment in advance because the purchase price instead of an assessor's disparate calculations determines the tax basis. As mentioned earlier, Proposition 13 treats property as a capital asset with a tax basis equal to the purchase price, similar to the basis rules for property outlined in the IRC.

Pursuant to Proposition 13, reassessment for tax purposes occurs only at sale or realization. Similar to the situations in *Allied Stores* and *Brown-Forman*, the state sets a standard and an individual decides whether to participate and at what price. Under the former current-value tax system, the state taxes an individual on the

unrealized gain of the property as perceived by the assessor whose calculations may very well be both arbitrary and capricious. Under Proposition 13, such risks are eliminated because the taxpayer and the free market control both the timing of realization and amount of tax assessment by means of a sales price.

This Court has examined the constitutionality of taxation on unrealized gains. In *Eisner v. Macomber*, 252 U.S. 189 (1920), the Court held a tax on unrealized gains unconstitutional. While this Court in *Commissioner v. Glenshaw Glass*, 349 U.S. 426 (1955) distinguished *Macomber*, the Court still held that the IRC formula, outlined in 28 U.S.C. §1001 that taxes on realization of the asset, was a proper administrative rule, if not a constitutional requirement. Marvin A. Chirelstein, *Federal Income Taxation* ¶ 5.01 (4th ed. 1985).

Moreover, taxation on realization is a more equitable tax treatment for property. Income tax, sales tax, user tax or any other commonly used form of taxation allows an individual a degree of control over his or her tax burden. These taxes divert money to a government entity by providing the state with a portion of the money an individual will receive or requires an individual to pay for a particular service. Such tax is called a "cash-flow" tax. A property tax, on the other hand, is traditionally a "portfolio" tax — it taxes people according to assets they have in their "portfolio" which they may or may not have realized.⁶ Proposition 13 attempts to shift property tax from a portfolio tax to a cash-flow tax.

The unique characteristics of property justify the tax system envisioned by Proposition 13. Unlike income, property often does not generate cash-flow. Land and building values are locked into the physical or aesthetic nature of the edifice or soil. A property tax based on perceived current-value and a ready buyer with available

⁶ Economists have generally agreed that the one of the greatest problems affecting a tax on unrealized gain concerns liquidity. With paper gains, a person is put in the situation of borrowing against the asset or selling. Chirelstein, *supra*. In a tight credit market, the costs and difficulty of financing a tax burden will force people to sell their homes.

cash or financing makes assumptions that are often invalid.⁷ A taxpayer under such a current-value system is subject to arbitrary and sporadic tax increases where the taxpayer has no control and is thus potentially subject to the capricious demands of the state.

Moreover, the determination of tax assessments under a current-value system can be arbitrary. "The difficulty of making annual property appraisals may be the chief reason for [taxing at realization]; the absence of ready cash to pay the tax on property appreciation and the consequent 'forced liquidation' of assets to meet tax obligations is another." Chirelstein at *supra* p. 12; see also William A. Klein, Boris I. Bittker & Lawrence M. Stone, *Federal Income Taxation*, 302-03 (7th ed. 1987). Tax assessing is an inexact science in that a particular property may have a multitude of different values. Property may be valued according to its replacement value, rental value, historical value, current market value, selling price, buying price or aesthetic value. See 1 California State Board of Equalization, *Property Taxes Law Guide*, §§200 et. seq.; Kenneth A. Ehrman & Sean Flavin, *Taxing California Property* (3rd. ed. 1989) §§12.01 et. seq.

Finally, in California, the county assessor is an elected official who may lower the assessments of his or her political friends and raise the assessments of his or her political foes.⁸ Discrepancies in assessment techniques can create huge disparities in tax burdens that would be imposed on an unwitting taxpayer without warning or notice. Only under an acquisition value regime does the state have a

⁷ For example, unlike individual stocks in an investment portfolio, it is difficult to subdivide and sell a portion of a residential property for cash to pay a tax bill. Zoning laws may preclude it and a buyer may not be available for such a small portion of land.

⁸ County assessors have been accused of favoritism in the assessment of property. While nearly all assessors are honest, such accusations create public skepticism. A former Los Angeles County assessor prior to Proposition 13 encountered such accusations. See, Robert Rawitch, "Suit Seeks to Block Tax on Mystery Ship," L.A. Times, Aug. 19, 1975, pt. I at 3; "Watson Accused of Overvaluing Property in County," L.A. Times, Oct. 19, 1972, pt. II at 1. Doubts concerning the validity of property assessments are reinforced by the different methods of valuation.

guaranteed, more evenly-distributed assessment system that provides property owners some degree of certainty of future tax burdens.⁹

2. *Proposition 13's valid policy objectives justify its tax classifications.*

As noted above, this Court defers to states and their ability to impose taxes on its electorate. *Allegheny Pittsburgh*, 488 U.S. at 344 (citing *Allied Stores*, 358 U.S. at 526-27); see also *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 359 (1973). Differences in treatment between taxpayers do not violate the equal protection clause where such differences are rooted in valid state policies. *Kahn v. Shevin*, 416 U.S. 351, 355 (1974); *State Board of Tax Commissioners of the State of Indiana v. Jackson*, 283 U.S. 527, 537 (1931). Thus, even if this Court finds that Proposition 13 does create certain classifications, the underlying policy objectives and general deference to the states in tax matters justify such classification.

The policy objectives of Proposition 13 are not only valid, but Proposition 13 demonstrably produces a fairer and more efficient system of property tax. Prior to Proposition 13, local governments established a budget and then set the tax rate on all taxpayers. As a result, property taxes fluctuated on a yearly basis. Theoretically, some years the rate would increase and other years the rate would drop. Empirically, however, the amount of tax always increased. Local governments had no restrictions on their spending and could fund whatever projects they chose by raising property taxes. Government essentially had a blank check to set tax rates and increase property assessments. Proposition 13 took away this checkbook by fixing the amount of revenue available to local government.

In 1977, property taxes represented a much greater percentage of a local government's budget than today. See, *California Taxing and Spending*, Cal-Tax News, Feb. 15, 1991, at 3-6. Under the prior system, property owners paid for government services according to

⁹ Proposition 13 was adopted in 1978 and it has been interpreted by over 100 California court decisions. Today, it is still the subject of interpretation by the California Supreme Court. See e.g., *Pacific Southwest Realty Co. v. County of Los Angeles*, 91 Daily Journal D.A.R. 16018, (December 30, 1991).

the value of their property. But under Proposition 13, property taxes constitute a smaller percentage of total governmental revenues because other sources have been created to fill any gaps. These sources draw from the whole taxpaying population which creates a more progressive overall tax burden in California and distributes the cost of government services more evenly. In fact, an independent Rand Corporation study evaluated the impacts of the California and New Jersey property tax revolts. In both cases, the progressivity of the total state tax burden increased with the new property tax systems, especially in California. See Dennis De Tray & Judith Fernandez, *Distributional Impacts of the Property Tax Revolt*, 43 Nat'l Tax J. 435, 445 (1990). Today, taxes are imposed generally on those with the ability to pay, contrary to the pre-Proposition 13 system. Now that Californians have greater input into how their money is spent, property tax has become a fixed, predictable revenue source like sales or income tax, rather than a fluid revenue source which would fluctuate to fill any deficit.

Petitioner and supporting *amici* contend that local governments have been stifled as a result of the effective spending limitations imposed by Proposition 13. This is untrue. Local governments have successfully found alternate sources of revenues and the voters have provided additional revenues for desired services and projects. *Amici* Brief of the American Planning Association and the California Chapter of the American Planning Association ("Planners Brief") at 19; *Amici* Brief of the Building Industry Association of Southern California, Inc. and the National Association of Home Builders ("Builders Brief") at 4. California voters prefer this control. Since 1978, not one anti-Proposition 13 measure has qualified for the ballot in California despite the fact that these *amici* have access to the initiative process.

It is precisely this decision of the people to which petitioner and supporting *amici* object. Although new revenue sources have been created to meet revenue shortfalls resulting from Proposition 13, petitioner and supporting *amici* simply do not favor these alternatives. *Amicus* Brief of the League of Women Voters of California ("League Brief") at 9-10; Builders Brief at 5; Planners Brief at 23; and *Amicus* Brief of the International Association of Assessing Officers ("Assessors Brief") at 12-13. Petitioner and supporting *amici* in effect argue that they know what is good for California, not the voters. Therefore, petitioner and supporting *amici* are hoping to

deceive this Court with policy arguments masked as "constitutional" challenges to achieve in the courtroom what they have been denied at the ballot box.¹⁰ See, e.g., Assessors Brief at 18.

The League Brief is especially egregious because it constitutes a frontal attack on direct democracy. The League of Women Voters of California (the "League") acknowledges that it is asking this Court to destroy our federal system of government. *Id.* at 4. The League argues that since Proposition 13 was an initiative, the rawest and most direct form of democracy, heightened scrutiny must be exhibited by this Court. League Brief at 13. The League and other supporting *amici* state that the California voter is not sophisticated enough to understand the ballot measures. League Brief at 13, fn.10. They assert that the voters are unaccountable and unenlightened, unlike supporting *amici* which have "pure" motives. Builders Brief at 13 (fees complicate and increase the costs of their industry); Planners Brief at 10-11 (any reduction in revenue or the size of government would reduce the need for their services); and Assessor Brief at 18-20 (which recommends annual reassessment programs). Not only is this insulting to the California voter, but in a democracy, it is precisely initiatives like Proposition 13 which should be given greater deference because they represent the clear choice of the voters in a matter which is clearly of a legislative nature.

A weak link in our democracy has been the politicians' extravagance with public funds, in combination with their special ability to avoid public accountability. Individually, all government spending programs appear plausible; someone will always benefit. But collectively, unfettered spending grows, creating a national debt, huge taxes and public resentment. Twice in American history has this phenomenon prompted drastic and decisive outbursts of citizen indignation. The first event was the Boston Tea Party and the second was Proposition 13. Moreover, Proposition 13 has been found constitutional at every state court level. It has existed for 13 years and no political force has been able to dent its approval. The effects of Proposition 13 are evident daily in the form of increased

¹⁰ "Supporting Nordlinger's appeal, the League of Women Voters of California said the high court should address [Proposition 13] because 'the political realities are such . . . that a political solution is not practical.'" Dori Meinert, "High court will rule on Prop. 13," S.D. Union, Oct. 8, 1991, Sec. A, 1.

fees and sales taxes. See generally, the supporting *amici* briefs. Nevertheless, Proposition 13 remains popular to the overwhelming majority of Californians. This Court must not be led astray by a vocal minority attempting to use the court system for personal and political gain.

IV. UNDER THE FEDERAL SYSTEM OF GOVERNMENT, CALIFORNIA HAS THE RIGHT TO ESTABLISH ITS OWN TAXATION SYSTEM

Federalism demands a balance between federal and state power. A dual sovereignty between the state and national governments exists today and numerous court decisions recognize this fundamental principle. In *Gregory*, this Court reaffirmed the importance of states and the constitutional requirement to protect their independence. The Court wrote that "the maintenance of [state] governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the National government. The Constitution, in all its provisions, looks to an indestructible Union, composed of indestructible States." *Gregory*, 111 S.Ct. at 2399 (quoting *Texas v. White*, 74 U.S. 700 (7 Wall. 1868) (quoting *Lane County v. Oregon*, 74 U.S. 71, 76 (7 Wall. 1868))).

The preservation of the states, through limited government, is rooted in the text of the Constitution itself. The tenth amendment to the Constitution provides that "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. Such a provision insures a form of decentralized government that can respond more quickly and appropriately to the ever-changing needs of society. States have been universally recognized as "laboratories" for social policy and many of the national programs enacted by Washington first received their genesis in a state capitol. *Gregory*, 111 S.Ct. at 2399.

But perhaps the most significant benefit of federalism lies in its check on the abuses of power in general. "The 'constitutionally mandated balance of power' between the States and Federal Government was adopted by the Framers to ensure the protection of our 'fundamental liberties.'" *Atascadero State Hospital v. Scanlon*, 473 U.S. 234, 242, (1986) (quoting *Garcia v. San Antonio Metropolitan*

Transit Authority, 469 U.S. 528, 572 (1985) (Powell, J., dissenting). This balance between our state and national governments insures that no one entity accumulates enough power to threaten our democracy.

A. FEDERAL JUDICIAL INTERFERENCE WITH PROPOSITION 13 IMPROPERLY VIOLATES THE CONSTITUTIONAL PRINCIPLE OF FEDERALISM.

A precarious balance exists between the states and the national government, in large measure, due to the national government's decided advantage under the supremacy clause of the Constitution and the wide powers obtained through this Court's interpretation of the commerce clause. See U.S. Const. Art. VI and Art. I, §8, cl.3. Yet, as long as each branch of the national government acts within its powers, the federal system will remain intact. This was the Court's reasoning in *Gregory* when it held that a Congressional statute did not supersede the Missouri state constitution regarding the qualifications of its elected officials. *Gregory*, 111 S.Ct. at 2408. In *Gregory*, this Court held that the independence of states is tied to their ability to create the qualifications for their officeholders. 111 S.Ct. at 2400. This Court held that it was incumbent on Congress that, if it desired to override a provision of a state constitution that was so closely identified with a State's existence, it must explicitly express its intentions to do so. *Gregory*, 111 S.Ct. at 2401 (citing *Atascadero*, 473 U.S. at 242).

This Court has similarly held that the taxing authority is integral to a State's governing ability and function in our federal system. Of all such areas, state taxation is perhaps the most important. *Taub v. Kentucky*, 842 F.2d 912, 919 (6th Cir. 1988) (quoting *Dawson v. Childs*, 665 F.2d 705, 709 (5th Cir. 1982)). "[This] Court early recognized the need for judicial restraint in matters involving a state's fiscal affairs. *First National Bank v. Board of County Commissioners*, 264 U.S. 450 (1924)." *Id.* Proposition 13 was an amendment to the California constitution. It was adopted by a voter referendum which is the most direct form of democracy. As long as Proposition 13 does not clearly violate the U.S. Constitution, this Court should continue to show its traditional deference toward state tax questions in order to maintain the balance of our federal system.

B. PETITIONER'S POSITION ON PROPOSITION 13 RENDERS STATE BOUNDARIES MEANINGLESS.

If the Court adopts petitioner's reasoning, this Court would be bound to similarly abolish any differences in tax rates in other states. If Proposition 13 is found to violate the equal protection clause or restrict travel into California, then any difference in state tax levels becomes a violation of the equal protection clause or a barrier to travel. If so, the instant case will be recognized as the Supreme Court decision that equalized income tax, sales tax, property tax or any other commonly used form of taxation between states. As stated above, such a decision is an open invitation to every aggrieved land owner to seek a remedy in federal court, and the federal judiciary will need to respond appropriately.

Without the ability to tax independently and free from federal interference, states as states no longer exist. The ability to tax is a defining characteristic of sovereignty. The federal government has traditionally deferred to the states on this matter. Petitioner's position would impede the political process of state government and state referendums. This is petitioner's underlying objective. Petitioner and supporting *amici* argue against Proposition 13 by presenting a multitude of political arguments as "constitutional" issues. It is the *amici* and petitioner who distrust of the California initiative process and have directed this court challenge. Without the voter initiative process, most of the "negative" results that *amici* and petitioner present would not have been implemented. Despite petitioner's and *amici*'s arguments, the voters have maintained and supported the policies to which petitioner and *amici* object. Any reduction in voter accountability strengthens the role of special interests and creates less responsive government. Proposition 13 was a political battle pitting homeowners and small property owners against big business and special interest groups. See, Clarence Y. H. Lo, *Small Property Versus Big Government Social Origins of the Property Tax Revolt*, 81-85, 87-88 (1990). Petitioner's *amici* fall into the category of special interests that opposed Proposition 13 in 1978. League Brief at 2.

A ruling against Proposition 13 by this Court would give a political powerful minority the victory that it has lost at every level — with the electorate in 1978, with the Legislature throughout the 1980s, and the California court system. This Court has been

willing to accept the ruling of the voters in other instances that have involved societal choices within a constitutional framework. This Court has deferred to electorate's choice once it has been demonstrated at the ballot box. See, e.g., *Gregg v. Georgia*, 428 U.S. 153, 179-84 (1976); *Miller v. California*, 413 U.S. 15, 24 (1973). In the instant case, petitioner and supporting *amici* claim that if the California voter really understood the impact of Proposition 13, they would repeal the measure. However, the voting results suggest the opposite. Despite clear evidence that the California voter was informed of all of the arguments raised by petitioner and supporting *amici*,¹¹ the California voters overwhelmingly adopted Proposition 13 and its subsequent amendments. Legislative efforts to lessen Proposition 13's impact have also met with failure. *Cf.* Assessors Brief at 15-17 (records legislative actions to further limit property taxes).

This Court is the final arbitrator of our nation's federal system. Through its careful and discreet judgment, this Court defends our decentralized government and prevents the abuse of power by any single governmental entity. Such a balance has been maintained only by abiding to the wishes of the American people within our constitutional framework. If the Court chooses to waver from its traditional position of granting state tax policies wide latitude, this Court will not only be the final review panel of every state's tax code, but will have upset the "only security against the abuse of power" — our federal system. *McCulloch*, 17 U.S. at 428.

¹¹ The independent analysis by the California Legislature Analyst which immediately preceded the text of Proposition 13 in the ballot pamphlet, stated that "[a]s a result [of Proposition 13's property tax reassessment method], two identical properties with the same market value could have different assessed values for tax purposes if one of them has been sold since March 1, 1975." California Ballot Pamphlet, June, 1978, Primary Election, 57. Furthermore, in the Rebuttal to Arguments in Favor of [Proposition 13], the opponents clearly stated that Proposition 13 "PLACES a disproportionate and unfair tax burden on anyone purchasing a home after July 1, 1978." *Id.* at 58 (emphasis in original). Opponents continued by stating that "[h]omeowners living in identical side-by-side houses will pay vastly different property tax bills." *Id.* at 59.

V. CONCLUSION

For the foregoing reasons, this Court should reject petitioner's claim and find Proposition 13 constitutional.

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Respectfully submitted,

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